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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 9

JULIUS EMSPAK,
Petitioner,
vs.
UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 67

JULIUS EMSPAK,
Petitioner,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

The Interest of the American Civil Liberties Union

This brief *amicus curiae* is filed, pursuant to Rule 27(9) of the Rules of the Court, with consent of the parties, which is being filed simultaneously herewith.

The leading domestic problem of our day is the balancing of the needs of individual freedom with those of national security. We believe that in fighting the menace of Communist totalitarianism, Congress can and should enact such additional legislation as might be necessary to deal with the menace of genuine acts of subversion, for the Communist Party is distinctively and essentially characterized by both extreme anti-democratic doctrine and practice, and by obedience to the government of the Soviet Union,

a despotic power which dominates a world-wide revolutionary movement unprecedentedly threatening the national independence and individual civil liberties of all other countries. Some of those persons who submit to the Communist Party's rigid totalitarian discipline (whether formal members or not) and some of its leaders have been convicted of illegal, secret conspiracies or illegal acts. We recognize that Congress has a right to investigate this menace with a view to formulating appropriate legislation, but we are opposed to any tendency by which American democracy might, in combatting this menace, pay the supreme compliment of imitation of Communist tyranny by the abridgment of freedom of speech, press or association. It is our belief that while the Senate of the United States has authorized an investigation consistent with civil liberties into genuine subversive acts, the mandate of the House Committee on Un-American Activities, whose only authorized purpose is to investigate propaganda,[1] and whose stated purpose in this inquiry was to "expose Communism," represents in itself a threat to American democracy both in general and in this specific case. We have also opposed the Committee from its

1. Rule XI(1)(q)(2) of the Rules of the House of Representatives, as amended by Section 121(b) of the Legislative Reorganization Act of 1946, c. 753, 60 Stat. 828, and thereafter adopted by the House of Representatives (H. Res. 5, 81st Cong., 1st Sess., 95 C.R. 10 (1949)), provides:

> "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

inception because of the vagueness of the term "un-American" in its charter. We have been opposed to the Committee because of its past arbitrary procedures and obviously political partisan prejudices, but in all fairness to the Committee, we must point out that their hearing procedures have recently improved.[2]

There are in this case vitally important questions as to the proper methods by which to raise the privilege against self-incrimination and precisely what conduct constitutes contempt. However, we file this brief solely in reference to the First Amendment questions which this Court has agreed to review in this case,[3] and solely because of our interest in civil liberties.

Statement of Facts

The petitioner, Julius Emspak, was indicted and convicted for contempt of Congress in having refused to answer questions during the course of an investigation by the House Committee on Un-American Activities, which, under the terms of its mandate, is authorized to investigate solely un-American propaganda activities. In the course of its investigation, Emspak refused to answer questions as to whether he knew various individuals or officials of

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2. "Freedom—Justice—Equality, Report on Civil Liberties, January 1951—June 1953." ACLU (1953), p. 78. The Union, however, severely criticized the chairman of the Committee for his recent conduct in the case of Mrs. Agnes Meyer, and pointed out the continued political partisanship of the Committee in the Oxnam hearing. Id. at 78-79.

3. While the Court has not been asked to review the constitutionality of the Committee's mandate on its face, we discuss this question below (as it has been discussed in petitioner's brief) because we can conceive of no specific application of the mandate so different from the one at bar which might conceivably be upheld as constitutional. In other words, we do not see how the Committee's mandate can ever be constitutionally applied.

the United Electrical Workers; whether certain persons were UEW officials; and about his affiliation with allegedly Communist organizations and membership in the Communist Party. During the course of the investigation, the one-man subcommittee which questioned him stated that the purpose of the inquiry was to "expose Communism." This Court has agreed to review the questions of whether the Committee's mandate, "as construed and applied herein, abridged the petitioner's freedom of speech, press and assembly in violation of the First Amendment to the Constitution", and "Whether the First Amendment protects a witness before a Congressional committee against the compulsory disclosure of the identity of trade union officials with whom he is associated and of his political views and affiliations."

The Issues

The sole issues with which we are concerned are (1) the unconstitutionality of the mandate of the House Committee on Un-American Activities, on its face and as applied; (2) the departure by the Committee from the terms of its mandate and from constitutionally permissible investigation; (3) the violation of the First Amendment in the particular questioning of the petitioner here.

POINT I

The mandate of the House Committee on Un-American Activities is unconstitutional, both on its face and as applied.

We do not wish to burden this Court with repetition of the arguments contained in the petitioner's brief, which we believe amply demonstrate the unconstitutionality of the mandate of the Committee, both on its face and as

applied here. We wish solely to present additional arguments in this regard to this Court. This brief is therefore in no sense a complete analysis of the problems involved.

This Court has emphatically rejected the implication that "The power of government over beliefs is as unlimited as its power over conduct and [that] the way is open to force disclosure of attitudes on all manner of social, economic, moral and political issues, * * *." The Court stated "that that result does not follow 'while this Court sits.'" *American Communications Asso.* v. *Douds*, 339 U. S. 382, 410. We submit that the charter of the House Committee on Un-American Activities, as it has been consistently applied by the Committee itself and on its very face, is nothing less than a legislative authorization (at least where unfriendly witnesses are concerned) to "force disclosure of attitudes on all manner of social, economic, moral and political issues." If this language in *Douds* is to have meaning, then the contempt conviction below must be declared invalid.

Further authority is found in the *Douds* case to demonstrate the unconstitutionality of the Commitee's mandate. We concede that the Committee does not directly regulate speech, but we think it amply proved in petitioner's brief that the Committee's operations have tremendously circumscribed the exercise of First Amendment freedoms, as demonstrated by the extensive intolerance of dissent and the fear to express dissent, so prevalent in the country today. Where there are such effects upon the exercise of First Amendment freedoms, the Court must weigh those effects against the public interest to be protected. As this Court stated in *Douds*, "When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of

these two conflicting interests demands the greater protection under the particular circumstances presented. * * * We must recognize, moreover, that regulation of 'conduct' has all too frequently been employed by public authority as a cloak to hide censorship of unpopular ideas." *Id.* at 399.

We submit that investigation can result in abridgment of freedom of speech too—the power to investigate into propaganda and to make people account for what they have said in the field of propaganda obviously operates as a threat against complete expression. Cf. *U. S.* v. *Rumely*, 345 U. S. 41, 46. That investigation of propaganda has here been employed by public authorities as a cloak to hide censorship of unpopular ideas is inaccurate only to the extent that the Committee has not even used its power as a cloak; it has openly indicated, as set forth in petitioner's brief, that it wishes to suppress certain ideas. The Committee itself has stated that its way of exposure is "more effective than a Gestapo." 77th Cong., 1st Sess., H. Rept. 1, 23 (1941). Speech and association cannot be free when speech or association today may mean a subpoena tomorrow.

The Court must weigh, against this abridgment of freedom of speech, the interest of Congress in investigating to gain information necessary to the formulation of legislation.[4] The latter interest is of course one which

4. We wish to point out the non-applicability to this case of the following doctrine: that in determining "need for regulation of particular forms of conduct," this Court "is in no position to substitute its judgment * * * for that of Congress." (*American Communications Asso.* v. *Douds*, 339 U. S. 382, 400-401). For here Congress has itself rendered conflicting judgments, in that the Senate of the United States, unlike the House of Representatives, has never found it necessary or desirable to create a committee to investigate un-American propaganda.

demands the greatest protection. The menace of Communist totalitarianism may well require additional congressional legislation, and investigative inquiry is a prerequisite to such legislation. But there are many different things which may be investigated, and there are many different ways of investigating. We demonstrate in Point III below the possible alternatives open to Congress to investigate genuine dangers to our democracy.

POINT II

The Committee, by making the investigation here in order to "expose Communism", departed both from its mandate and from constitutionally permissible standards.

A. The Committee Departed From the Terms of Its Mandate.

While the duly authorized agent of the Committee examining petitioner stated that the Committee's purpose in this investigation was to expose Communism, the trial court below permitted the government to introduce evidence to the effect that this was not the real purpose of the Committee. We do not quarrel in any way with the apparent concession by the United States that a court may go behind the stated purpose of the legislative inquiry to determine whether, whatever was stated at the inquiry, the real purpose was something else. We urge, however, that this Court state clearly that it is always open for witnesses accused of contempt to do this, too, for the courts have not previously recognized this doctrine.[5]

5. For example, in the case of *Eisler* v. *United States*, the witness there had offered to prove that the House Committee brought him before it to harass and punish him for his political beliefs, not to

The Committee is authorized merely to investigate. It is nowhere authorized to expose. It therefore exceeded the terms of its mandate.

B. Even if the Committee Had Been Authorized to "Expose", It Would Have Been Acting Beyond its Constitutional Power.

No legislature has any right to "expose" anything merely for the sake of exposure. Its inquiries must be limited to formulation of legislation. Our government is one of limited powers as the Tenth Amendment makes explicit. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." As this Court has stated:

> "The powers of Congress itself, when acting through the concurrence of both branches, are dependent solely on the Constitution. Such as are not conferred by that instrument, either expressly or by fair implication from what is granted, are

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interrogate him upon any matter relevant to the Committee's inquiry, which proffer was rejected (R. 101, 102-119, 134, 135). [Cert. granted, 335 U. S. 857 (1948); case removed from docket, 338 U. S. 189 (1949); cert. dismissed, 338 U. S. 883 (1949).] Such proffers may be vitally important. For example, Sen. Joseph McCarthy recently announced that he would subpoena before his committee former Brig. Gen. Telford Taylor to inquire whether he was receiving government funds as a reserve officer, because Mr. Taylor had interested himself in the Senator's investigation of "potential espionage" at Fort Monmouth. *N. Y. Herald Tribune*, Dec. 11, 1953, pp. 1, 42. The Senator has never embarked upon any investigation of use of government funds for reserve personnel; he has never subpoenaed persons who merely interested themselves in his investigations. Since Mr. Taylor had only a few days previously vigorously criticized the procedures of the Senator's committee, the real purposes of the inquiry are seriously open to challenge. There should be opportunity in such a case to prove that the inquiry is other than a proper one. If this opportunity is not provided, then surely it was error to admit evidence from the government as to the Committee's purpose in the case at bar.

> 'reserved to the States respectively, or to the people.' Of course, neither branch of Congress, when acting separately, can lawfully exercise more power than is conferred by the Constitution on the whole body. * * *"
>
> *Kilbourn* v. *Thompson*, 103 U. S. 168, 182.
>
> "And it is a necessary deduction from the decisions in Kilbourn *v.* Thompson and re Chapman that a witness rightfully may refuse to answer where the bounds of the power are exceeded or the questions are not pertinent to the matter under inquiry."
>
> *McGrain* v. *Daugherty*, 273 U. S. 135, 176.

Under the American system, when something lying beyond the limited powers of our government (which is not the nation, but only one instrumentality of the people) needs exposing—as often happens—then the people themselves do the exposing, by free speech, not the legislature.

POINT III

The questioning of petitioner in this case violated his rights under the First Amendment to the United States Constitution.

The crucial question asked by the House Committee on Un-American Activities is usually whether the witness is or has ever been a member of the Communist Party. In the case at bar additional questions relevant to other associations were also asked. The ACLU maintains that a person, by refusing to answer on the ground of the First Amendment's protection of free association, may challenge the propriety of any question concerning his or another person's Communist or other totalitarian associations.

However, we submit that this Court need not now pass upon the question of whether the First Amendment protection of free association and speech is always violated when such questions are asked by other legislative committees, with different mandates, in every conceivable circumstance. Such cases may be decided by this Court as they may arise. We limit our argument here to the point that these questions when asked by the House Committee on Un-American Activities violate First Amendment rights.

The sole purpose and power of the Committee is to investigate propaganda and matters relevant thereto. Thus, while it might be contended that an inquiry into associations is not a violation of the First Amendment if connected to an inquiry into possible illegal activities, or those which might be made illegal, we do not discuss those questions since we deal here with the question of investigation into associations relevant only to propaganda deemed un-American. The associational questions can be relevant to the inquiry only when connected with propaganda. If the First Amendment is a restriction upon congressional inquiry, and no one can doubt that it is—for Congress cannot by inquiry accomplish that which it is forbidden to do by legislation—then it is clear that an inquiry directed towards propaganda (which is after all nothing more than the exercise of free speech) is the most flagrant violation of the First Amendment which is possible by inquiry. For it takes courage in these days to exercise the right to speak freely, when one knows that —apart from the social consequences following in this day and age from voicing unpopular ideas—any expression of speech, or any association relevant to the exercise of free speech, may enable a congressional committee to subpoena him and make him account for every chapter of his life.

Congress cannot blanketly punish those who advocate what Congress considers to be un-American doctrines.

But the Court would have to shut its eyes to life in America today to believe that the Committee by its investigating does not in a very real sense inflict punishment. Refusal to answer is punishable, of course, by contempt. This usually means a jail sentence. But even a witness who may refuse to answer on valid grounds, as well as one who does answer, is nonetheless punished in a very real sense. He is not imprisoned, but he is made a pariah. He is not imprisoned within a jail, but the effect of the episode is frequently to bar him from gainful employment in his accustomed field.[6] He is not fined, but his income may diminish almost to the vanishing point. In addition, his social standing in the community, his familial relationships, his own mental well-being—all these are severely injured.

The compulsory enunciation of one's views is proscribed as a complete negation of free speech, though free speech is a mechanism for obtaining the expression and comparison of conflicting opinions. *West Virginia State Bd. of Education* v. *Barnette*, 319 U. S. 624 (1943). Not only previous censorship, but subsequent punishment is prohibited, where the speech in question relates to

6. For example: Movie actor Larry Parks was subpoenaed before the Committee in 1951, admitted past membership in the Communist Party, but refused to publicly tell the names of other Party members he knew. "Since testifying, Parks hasn't been able to get a film job." *Variety*, Aug. 19, 1953, p. 2, col. 3. This was in spite of the fact that "The Committee on several occasions criticized the studios for their refusal to employ the actor." *Ibid.* Mr. Parks apparently did name names in executive session in 1951, however, though the testimony was not made public until 1953. *6 Investigation of Communist Activities in the Los Angeles Area*, Hearings before the Committee on Un-American Activities, 1953, pp. 2299-2308 (1953). So far as we are aware, Mr. Parks is nonetheless still unemployed in the film industry.

Moreover, the Committee's listings have been used in the radio and television industry as one basis of a blacklist in employment. Miller, *The Judges and the Judged* (Doubleday & Company, Inc., 1952), *passim*, esp. pp. 20, 128, 134.

matters of public concern, for punishment and the threat of punishment operate to restrain the free expression of views. By the same principles, the revelation under governmental compulsion of opinions and ideas concerning public policies violates the First Amendment.

Much wisdom has emanated from brave leaders, but the world's wisdom and the nation's progress owe something to the timid, too. Where public matters are in issue, the transitory majority provides no insurance of ultimate truth, and final acceptance has often been achieved by ideas hesitantly advanced, initially ridiculed or even brutally suppressed. The world of ideas would be impoverished indeed if dissenters could only raise their voices to their immediate circle of friends, their own organization or whatever group they select for audience.

Since the Committee's mandate does not define its authority in terms of a specific area over which Congress has power to legislate and since the witness may refuse to answer if the matter is not pertinent to an inquiry Congress may lawfully authorize in aid of one or another of its legislative powers, *Kilbourn* v. *Thompson*, 103 U. S. 168, the witness is put to the task of determining whether the evidence demanded is pertinent to any possible exercise of Congressional power. The witness is thus required to assume the burden of mental review of all those powers, and to assume the risk of contempt, if the evidence demanded is, in one sense or another, pertinent to any one of them. Because this is so, the witness rather than risk prosecution may disclose information which the Committee has no right to exact. Since such compulsory disclosure is threatened by the mandate itself, it operates to burden speech in this way too. For as we have said, the dissenter who may be called to account before a hostile audience may prefer silence altogether. A nation which relies in its search for truth upon the free circula-

tion of ideas cannot afford to put the price of dissent so high.

These threats to the exercise of freedom of speech or association solely in an effort to investigate propaganda strike us as an obvious invasion of the First Amendment. It might be argued that such a result should be tolerated if it is necessary for the legislature to make such a broad inquiry. But we submit that it is entirely unnecessary, as the United States Congress itself has shown.

Senate Resolution 366, 81st Congress, created what is popularly known as the Subcommittee on Internal Security of the Senate Judiciary Committee. The Subcommittee's purpose is not to investigate propaganda, but to investigate subversive acts and the administration of the internal security laws.[7] We have never opposed the charter of this Subcommittee, for we believe that Congress has a right to investigate genuine subversive acts. Whatever may be this Court's eventual finding on the question of whether inquiries may be made into beliefs and associations by a

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7. The Resolution creating the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws, contains the following mandate:

> "*Resolved*, That the Committee on the Judiciary, or any duly authorized subcommittee thereof is authorized and directed to make a complete and continuing study and investigation of (1) the administration, operation, and enforcement of the Internal Security Act of 1950; (2) the administration, operation, and enforcement of other laws relating to espionage, sabotage, and the protection of the internal security of the United States; and (3) the extent, nature, and effect of subversive activities in the United States, its Territories and possessions, including, but not limited to, espionage, sabotage, and infiltration by persons who are or may be under the domination of the foreign government or organizations controlling the world Communist movement or any other movement seeking to overthrow the Government of the United States by force and violence."

The Resolution was agreed to on December 21, 1950 (96 C. R. 16,—872). The Subcommittee was continued by S. Res. 46, 83rd Cong., agreed to on January 30, 1953 (99 Daily C. R. 710).

committee designed to investigate subversive acts, inquiry into beliefs and associations pursuant to an investigation of propaganda must clearly be considered a violation of the First Amendment.

The failure of the House Committee's charter to limit the scope of its inquiry to such matters as might be relevant to Congress' power of legislation to combat the evil, requires the balance to be struck in favor of freedom, not authority.

The Committee was created for the express purpose of investigating material compiled by those who exercise their constitutional right of freedom of speech and association—"propaganda". By inquiring into their associations and beliefs in disseminating the product of First Amendment rights, the Committee only compounds the existing evils of its charter.

CONCLUSION

We respectfully urge that this Court reverse the judgment below and declare unconstitutional the mandate of the House Committee on Un-American Activities, both on its face and as applied herein, and declare the questioning of this petitioner in its investigation both a departure from the terms of its mandate and from constitutionally permissible investigation, as well as in violation of the First Amendment.

Respectfully submitted,

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Carr, *The House Committee on Un-American Activities*, 1945–1950 (1952) 60, 65
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Dimock, *Congressional Investigating Committees* (Johns Hopkins University Studies, Series XLVII, No. 1, 1929), p. 164 105
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Report of the President's Committee on Civil Rights (*To Secure These Rights*, U. S. Govt. Printing Office, 1940), pp. 52, 53	110
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Webster's New International Dictionary (Merriam-Webster 2d ed., 1950)	88, 89, 91
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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 67

JULIUS EMSPAK, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Court of Appeals (R. 352–363) is reported at 203 F. 2d 54. The opinions of the District Court denying petitioner's motions to dismiss the indictment (R. 116–119, 119–131) are reported at 95 F. Supp. 1010, 1012. The opinion of the District Court at the close of the trial (R. 224–227) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 19, 1952 (R. 363). A peti-

tion for rehearing was denied on April 13, 1953 (R. 371). The petition for a writ of certiorari was filed on May 13, 1953, and granted on October 12, 1953 (R. 371–372). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the evidence supports the conclusion reached by the district court, and sustained by the court of appeals, that petitioner's refusal to answer certain questions put to him by a subcommittee of the House Committee on Un-American Activities was not based on a claim of privilege against self-incrimination.

2. Whether a conviction for refusal to answer questions asked by a Congressional committee cannot be sustained unless it is shown that the witness was specifically directed to answer the questions involved, or whether it suffices to show that the witness understood that the "answers" made by him were regarded by the committee as a refusal to answer, that the grounds asserted by him as a basis for such refusal to answer were clearly rejected by the committee, and that he was expected to answer the questions.

3. Whether the questions asked petitioner come within the scope of the authority granted to the House Committee on Un-American Activities by the Resolution creating it and defining its powers; and if so, whether that Resolution, as

so construed, is unconstitutional, in that (a) it exceeds the investigatory or legislative power of Congress, (b) it is too vague and indefinite, or (c) it abridges rights secured to petitioner by the First Amendment.[1]

STATUTE AND RESOLUTION INVOLVED

2 U. S. C. 192, R. S. 102, as amended, provides as follows:

> Refusal of witness to testify.
>
> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

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[1] Petitioner's brief also raises broad questions as to the constitutionality of the Resolution as generally applied by the Committee in other situations. Although, in the Government's view, such questions are not presented by the record in this case and hence are not properly before the Court, they are discussed *infra*, pp. 77–110.

Rule XI of the Rules of the House of Representatives, as amended by Section 121 (b) of the Legislative Reorganization Act of 1946, c. 753, 60 Stat. 812, 823, 828, and thereafter adopted by the House of Representatives (H. Res. No. 5, 81st Cong., 1st sess., 95 Cong. Rec. 10–11) provides:

Rule XI

Powers & duties of committees

(1) All proposed legislation, messages, petitions, memorials, and other matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively:
* * *

* * * * *

(q) (1) Committee on Un-American Activities.

(A) Un-American activities

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

STATEMENT

On November 20, 1950, the petitioner, Julius Emspak, was indicted by a grand jury of the United States District Court for the District of Columbia for having wilfully refused to answer 68 questions before a duly created subcommittee of the Committee on Un-American Activities of the House of Representatives, in violation of the provisions of 2 U. S. C. 192 (*supra*, p. 3), which provides, *inter alia*, that a witness summoned be-

fore a committee of Congress who refuses to answer "any question pertinent to the question under inquiry" shall be guilty of a misdemeanor (R. 4–13).

He pleaded not guilty (R. 13–14), and made various motions to dismiss the indictment (R. 14–17), all of which were overruled by the trial court. See R. 116–119, 119–131, 95 F. Supp. 1010, 1012. Later, on the trial of the case, the following was stipulated or shown:

The petitioner was summoned by the Committee to appear as a witness at a series of hearings conducted in August and December of 1949. According to the Committee counsel, the purpose of the hearings was to investigate into "the infiltration of Communist labor unions working on defense projects, from the standpoint of individuals who weren't actually working in the plant but who were officials of the union, as distinguished from those who had actual contact with classified material." (R. 157.) The hearing to which the petitioner was called, the counsel also testified, "was set up for the particular purpose of developing the practices and duties of various officials of the national organization of UE[2] with the idea of determining whether or not there was a difference in practice, in certain Government agencies, in screening or clearing officials of the union for security purposes in plants where the Atomic

[2] United Electrical, Radio, and Machine Workers of America.

Energy Commission, or the Army, Navy, and Air Force, were having secret Government projects worked upon" (R. 157).[3]

[3] The exact language of the Committee counsel at the hearings does not appear in the record. It does appear in the published Committee hearings. Hearings, House Committee on Un-American Activities, 81st Cong., Hearings Regarding Communist Infiltration of Labor Unions, pp. 541–542. The Committee counsel there stated at the opening of the hearings:

> Mr. TAVENNER. Mr. Chairman, the purpose of this hearing is to inquire into the question of Communist affiliation or association of certain members of Local 601 of the United Electrical, Radio and Machine Workers of America, CIO, which is engaged in work at industrial plants important to the national defense.
>
> The advisability of recommending legislation providing for security standards, and the advisability of tightening present security requirements in industrial plants working on certain Government contracts, was considered by the committee in both its open and executive sessions on June 6, 1949, as a result of the testimony of Leona and Joseph Franey and Loren G. Haas.
>
> It will be remembered that Mr. Wood, the chairman of this committee, offered H. R. 3903, section 2 of which would make it an offense for any individual employed in connection with the performance of any national defense contract "(1) to become or remain a member of, or affiliated with, the Communist Party of the United States of America, or any organization which shall have been designated as subversive by the Attorney General; (2) to contribute funds or services to the Communist Party of the United States of America or to any organization which shall have been designated as subversive by the Attorney General; or (3) to advise, counsel, or urge any other individual employed in connection with the performance of any national defense contract to perform, or to omit to perform, any act if such act or omission would constitute a violation of clause (1) or (2) of

The authority of the Committee to conduct investigations and to subpoena witnesses in connection therewith depends on House Rule XI (q) (*supra,* pp. 4–5), the crucial language of which authorizes the Committee on Un-American Activities to make, from time to time—

> * * * as a whole or by subcommittee * * * investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

Pursuant to the Committee's subpoena, petitioner, who was general secretary and an ex-officio member of the Executive Committee of UE, appeared before a subcommittee of the Committee on December 5, 1949 (R. 239, 159) at which time

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this section." This bill was referred to this committee.

It is the further purpose of this hearing to develop facts for the committee's consideration in connection with this resolution.

* * * * *

It does not appear that petitioner was present on this particular day of the hearings, although it does appear that petitioner was following, at least, the press reports as to the activities of the Committee (R. 171).

he was asked a number of questions, for the most part related to the structure and activities of the United Electrical, Radio, and Machine Workers of America (hereinafter called UE) and to his activities as editor of the UE News, the journal of the union (see R. 159–199, 37).

These questions petitioner answered. But to sixty-eight of the questions asked him by the subcommittee, he made responses which the Committee did not regard as answers. Fifty-eight of these questions asked in substance that he state whether or not he knew certain named individuals and could disclose whether or not those individuals presently held or had held certain positions in the UE (R. 5–12).[4] Eight of the questions related to petitioner's possible membership in the Communist Party, present or past, and to various evidences of that membership (R. 12–13); and the other two asked about his "affiliation" with the National Federation for Constitutional Liberties and his "association" with the Civil Rights Congress (R. 12).[5]

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[4] Petitioner showed by affidavit, in support of his motion to dismiss the indictment, that 17 out of the 50 persons about whom he was questioned, and refused to answer, had been charged before a Congressional committee as having Communist and Communist-front affiliations (R. 67–85); and that the UE itself was thought to be Communist dominated (R. 51–56).

[5] As to these questions, petitioner showed by various documents introduced in support of his motion to dismiss the indictment that he had been charged with being a Communist (R. 29–36, 47–49, 50). He also stated that the two named

Petitioner's refusal to answer these questions, which he now contends was based on a claim of privilege against self-incrimination, but which he then claimed was not a refusal at all, may be illustrated by the questions and answers to some of the earlier questions, since the later answers were in general a reference to the earlier ones. The relevant colloquy follows (R. 167–173):

> Mr. TAVENNER [Committee Counsel]. Mr. Emspak, are you acquainted with Joseph Persily?
>
> Mr. EMSPAK. Mr. Chairman, I would like to say something at this point.
>
> Mr. MOULDER [Subcommittee Chairman]. You mean in response to the question?
>
> Mr. EMSPAK. I will answer the question; yes, in response to the question and as a statement of position.
>
> * * * * *
>
> As an individual, I would like to say one thing, and that is this: The line of questioning that counsel is developing now is a line that has been used on numerous occasions by this committee and other congressional committees in an attempt to harass the union, its leadership, and its members. It is a line of questioning that goes against my grain as an American. I was born in this country. Everything I am—
>
> * * * * *

---

organizations had been said to be Communist front groups (R. 32).

* * * I owe to the rich heritage and tradition of this country. I do not believe that a committee of this kind, especially in view of the recent record of this committee where it stooped to interfere in the partisan affairs of a local union, or any congressional committee, because of the rich tradition of this country which, if not perverted, will lead to a greater and better country—I don't think a committee like this or any subcommittee has a right to go into any question of my beliefs, my associations, or anything else. I have a couple of kids. They have a stake in this country, too.

Mr. MOULDER. I want to give you full opportunity to express yourself in answer to the question, but you are making an oration now.

Mr. EMSPAK. It is not an oration. It happens to be a very profound personal feeling.

Mr. MOULDER. What is the question?

Mr. TAVENNER. The question is: Are you acquainted with Joseph Persily.

* * * * *

Mr. EMSPAK. Because I have a stake in this country—

Mr. MOULDER. You are not answering the question. He asked you if you are acquainted with this man.

Mr. EMSPAK. I will answer it.

Mr. MOULDER. Are you or not?

Mr. EMSPAK. I was on the verge of answering it.

Mr. MOULDER. If you have any explanation to make you will be permitted to do so after you answer the question.

Mr. EMSPAK. Because of my interest in what is going on these days, because of the activities of this committee—

Mr. MOULDER. Are you going to answer the question?

Mr. EMSPAK. Because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amendment, supplemented by the fifth. This committee will corrupt those rights.

Mr. MOULDER. Do you think it corrupts you to answer the question?

Mr. EMSPAK. I certainly do.

Mr. MOULDER. Why does it corrupt you?

Mr. EMSPAK. Your activities are designed to harm the working people of this country. Every action this committee has ever taken has done that. You interfered last summer in the election of a local union at the request of a priest. You know that. You dragged down the prestige of this country.

Mr. MOULDER. You are not going to take over this committee.

Mr. EMSPAK. I don't want to.

Mr. MOULDER. And your statements are preposterous. The purpose of this committee is to expose communism as it exists in this country. What is the question?

Mr. TAVENNER. Are you acquainted with Joseph Persily?

Mr. EMSPAK. For the reasons I stated before, I answered it.

Mr. MOULDER. Then you refuse to answer the question?

Mr. EMSPAK. No. I answered it.

Mr. TAVENNER. Are you or are you not acquainted with Joseph Persily?

Mr. EMSPAK. I answered the question.

Mr. TAVENNER. Your replies are a refusal to comply with the request to answer it?

(Witness confers with his counsel.)

Mr. MOULDER. The record will reveal that you have not answered the question.

Mr. EMSPAK. I have answered it to the best of my ability under the circumstances.

Mr. MOULDER. Any further questions?

Mr. TAVENNER. Yes. In what capacity is Joseph Persily associated with the UE at this time?

Mr. EMSPAK. It is the same question over again. I will give the same answer.

Mr. TAVENNER. Is he an organizer in the UE?

Mr. EMSPAK. Mr. Chairman, it is the same question.

Mr. TAVENNER. You refuse to answer that?

Mr. EMSPAK. I answered it.

Mr. TAVENNER. Are you acquainted with Albert Smith?

Mr. EMSPAK. The same answer applies to that.

Mr. TAVENNER. In other words, you are refusing to answer whether you are acquainted with him or not?

Mr. EMSPAK. I have answered the question as I see the answer.

Mr. TAVENNER. Is he employed by UE?

Mr. EMSPAK. Mr. Chairman, I answered the question.

Mr. MOULDER. Could you tell us who these people are, Mr. Counsel?

Mr. EMSPAK. Excuse me, please.

(Witness confers with his counsel.)

Mr. TAVENNER. Joseph Persily and Albert Smith are the two persons whose names were mentioned.

Mr. MOULDER. Who is Joseph Persily?

Mr. TAVENNER. I thought he was connected with the UE, but I am unable to understand from this witness what the connection is, if any.

Mr. MOULDER. Do our records reveal who he is?

Mr. TAVENNER. I do not know whether they do or not, Mr. Chairman.

Mr. Emspak, has Max Helford ever been connected with the UE as a field organizer?

Mr. EMSPAK. Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it was announced because this committee presumably was interested in finding out things with reference to individuals in our organization by using whatever means it has at its disposal, and for the purpose of trying to

perhaps frame people for possible criminal prosecution.

I don't see how or why any individual should be subjected to that kind of questioning here if he is going to maintain, you know, his feelings on these questions, and I tried to express the feeling before when you interrupted me. I just don't intend, as I said then, to be a party to any kangaroo court proceedings of this committee or any other congressional committee. I think I have the right to reserve whatever rights I have in that respect to whatever appropriate bodies may be set up to deal with questions that come up.

Mr. MOULDER. Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?

Mr. EMSPAK. No; I don't, Mr. Chairman. As a basic proposition—and it has worked over the years and over the last few months as far as this committee is concerned—a slick job——

Mr. MOULDER. Do you know them or not?

Mr. EMSPAK. That does not concern this committee at all.

Mr. MOULDER. Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?

Mr. EMSPAK. No, I don't think this committee has a right to pry into my associations. That is my own position.

Mr. TAVENNER. Is Max Helford at the present time a field organizer for the UE?

Mr. EMSPAK. Mr. Chairman, that is repetition of basically the same question, and the same answer stands.

Mr. TAVENNER. Was Phil Saba originally from local 155?

Mr. EMSPAK. I answered that question.

Mr. TAVENNER. And is he now a field organizer for the UE in district 1?

Mr. EMSPAK. I answered that question and that is the only answer I will give on any of my associations, for the reasons stated.

Mr. TAVENNER. Is Hank Rhine presently an international representative of the UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Jack Gorelick now affiliated with the UE?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is Ernest Moyer a field organizer for UE in the Eastern area?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Do you know James Lustig?

Mr. EMSPAK. Same answer.

Mr. TAVENNER. Is he an international representative of UE?

Mr. EMSPAK. We can go on endlessly like this, I suppose, but the same answer holds.

* * * * *

Similar questions followed, to most of which petitioner responded by saying "Same answer." At one point in the colloquy, the following occurred (R. 174):

Mr. TAVENNER. Is Louis I. Sorti a field organizer of the UE?

Mr. EMSPAK. Same answer.

Mr. MOULDER. Same answer is your refusal to answer for the reasons given?

Mr. EMSPAK. I gave specific reasons why I felt I should not participate in this kind of questioning, and I stand by that.

And at a later point, the following occurred (R. 178):

Mr. TAVENNER. Mr. Emspak, have you ever been affiliated with the National Federation for Constitutional Liberties?

Mr. EMSPAK. I answered that, Mr. Chairman.

* * * * *

Mr. MOULDER. You mean you refuse to answer for the reasons previously stated?

Mr. EMSPAK. I answered it in the terms I did when I said as far as my associations and affiliations are concerned, that is something a committee of this kind should not pry into.

And, at another point in the later colloquy, the following occurred (R. 194):

Mr. TAVENNER. Did you, as a member of the Communist Party, attend the trial of Earl Browder at Communist Party headquarters in New York?

Mr. EMSPAK. I answered that.

Mr. MOULDER. You mean you refuse to answer for the reasons you gave at the beginning?

> Mr. EMSPAK. That is correct. I answered the best way I know how.

A report of the Committee was thereafter, on August 10, 1950, submitted to the House, reciting that petitioner had been called before the Committee and had refused to answer questions "pertinent to the subject under inquiry" (R. 275), which were set out verbatim, and concluding that he was therefore in contempt of the House of Representatives (R. 255–275, 240). The report was thereupon, by House Resolution of the same day, certified to the United States Attorney for the District of Columbia for appropriate action (R. 240).

At the conclusion of the trial, the judge, sitting without a jury, found petitioner guilty, specifically stating that "I find nothing in the record which indicates that the [petitioner] entertained the slightest fear or apprehension of federal prosecution" (R. 225); that "The [petitioner] failed to assert that right [the privilege against self-incrimination] and revealed no such apprehension" (R. 227); and otherwise made a general finding of guilty. Petitioner was thereupon sentenced to imprisonment for a period of six months and to pay a fine of $500 (R. 136–137).

On appeal, the judgment was affirmed by the Court of Appeals, sitting *en banc*. With respect to the issues presented by the grant of certiorari, the court was divided as follows: (1) Six mem-

bers of the court were of the view that petitioner had not in fact claimed the privilege against self-incrimination, but had made his objections more broadly to the general activities of the Committee (R. 356–357). Judges Fahy, Bazelon, and Edgerton took no position on this issue. (2) Three of the members of the court who voted to sustain the conviction were of the view that the Committee had made it sufficiently clear to the petitioner that he was required to answer the questions in the indictment, and that no specific direction to answer, *in haec verba,* was required (R. 361). The three remaining members of the majority were of the view that the conviction could be sustained if the petitioner merely refused to answer a proper question (R. 355–356). The dissenting judges thought that, under the ruling in the companion *Quinn* case,[6] a new trial was required for a determination by the District Court whether petitioner had been clearly advised that his objections to answering had been rejected and that he had been given another opportunity to answer (R. 361–363). Although agreeing that there was evidence to support a finding that petitioner had been so advised, they thought that it was not clear that the trial judge had applied proper standards. (3) The validity of the Committee was expressly considered and upheld by three

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[6] *Quinn* v. *United States*, 203 F. 2d 20 (C. A. D. C.), pending before this Court on petition for certiorari, No. 66, O. T. 1953.

of the members of the court who voted to sustain the conviction (R. 354). The other three who voted to sustain the conviction necessarily agreed, although their concurring opinion does not discuss the point (*cf.* R. 361). Judge Fahy also concurred "with respect to * * * the validity of the subcommittee" (R. 361). It is not clear that Judge Bazelon's opinion reaches the issue (see R. 361–362).

SUMMARY OF ARGUMENT

I

A. Although petitioner contends that he claimed the privilege against self-incrimination in response to the questions in this case, the fact is that he made it clear to the Committee that his only basis for refusing to answer was his view that the Committee had no right to inquire into his political beliefs, affiliations, or associations. He did not, at any time during the extended colloquy in which he expounded his view, indicate by any form of words that he feared that an answer to any particular question would tend to criminate him; and, indeed, he specificially disavowed any such claim. The fact that petitioner made some statements which, in another context, might have been, at best, consistent with a claim of privilege, cannot be permitted to obscure the overriding fact that he never claimed or intended to claim the privilege.

In any event, the question whether petitioner claimed the privilege against self-incrimination

as the basis for refusing to answer the questions asked him is one of fact. That question has been resolved against him by the trial court which considered the evidence, and by the Court of Appeals which reviewed the case. Their conclusions are, we submit, amply supported by the evidence.

B. Inasmuch as petitioner did not claim the privilege before the Committee, he cannot claim it now. For the privilege against self-incrimination cannot be relied on unless it is specifically claimed, and a general objection to the question will not suffice. *United States* v. *Murdock,* 284 U. S. 141, 148. The fact is that the privilege, however deeply rooted, is an exception to the general obligation to testify, and therefore must be interpreted, with that obligation in mind. One who would claim the privilege must do so clearly.

II

A. Petitioner also contends that his conviction cannot be sustained because it was not made clear to him by the Committee that, despite his objections to the questions, he was being required to answer. The record of the hearings, however, amply justifies the conclusion reached by the Committee, the trial court, and the Court of Appeals, that petitioner refused to answer the questions—even though he knew that his objections had been rejected and that he was being required to answer.

The record shows, indeed, that he conceded that he was refusing to answer the questions.

B. Petitioner further contends that, even if the record would support this conclusion, his conviction should nonetheless be reversed because there was no finding in the District Court that he refused to answer. There was, however, a general finding of guilt. As there was no request for special findings (see F. R. Crim. P. Rule 23 (c)), this was sufficient if the supporting evidence was sufficient. Moreover, examination of the trial judge's opinion shows that he was, in fact, satisfied that there had been a refusal to testify. It shows also that there is no basis for accepting the conclusion of the dissent below that he did not reach this conclusion on a "correct view of the governing principles."

III

The petitioner's major contention is that the Resolution constituting the Committee on Un-American Activities is unconstitutionally vague. On this aspect of the case, the Government takes the position that only two questions are properly before the Court: (1) whether the questions which were asked petitioner come within the scope of the authority granted to the House Committee on Un-American Activities by the Resolution creating it and defining its powers; and (2) if so, whether the Resolution as so construed is unconstitutional in that (a) it exceeds the investigatory

and legislative power of Congress, (b) it is too vague and indefinite, or (c) it abridges rights secured to petitioner by the First Amendment. In our view, the questions raised by petitioner which go beyond these are not properly before the Court.

A. The questions which were asked petitioner clearly come within the scope of the Committee's authority. The express purpose of the inquiry was to investigate into Communist infiltration into defense industries in connection with the recommendation of legislation on this subject. This inquiry comes within the language of the Resolution granting the Committee its authority. For that resolution authorized investigation into "the extent, character, and objects of un-American propaganda activities in the United States" and "the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries * * * and attacks the principle of the form of government as guaranteed by our Constitution * * *." It is clear, at the very least, that this covers Communism and Communist propaganda. It is clear also that it covers such other Communist activities as are integrally related to such propaganda. Considerable evidence has long been available to Congress of the use by the Communist Party of propaganda not only to create a following for their views, but also to develop leads for espionage

and sabotage purposes. All of these activities are obviously propaganda activities, or, at the very least, a measure of the diffusion or the extent, character, and objects of such propaganda. Moreover, even if there were doubt as to this interpretation, it has been removed by Congressional approval of the Committee's continuance in spite of knowledge that the Committee had thus interpreted the Resolution.

The questions which petitioner refused to answer were within the scope of the inquiry. Since the subject matter of the inquiry related to legislation controlling the employment of Communists in war plants and the encouragement of those already working in such plants to join or support the Communist Party or its fronts, there would seem to be no doubt that questions whose purpose was obviously to develop information about the manner in which the Communist Party made its influence on UE effective, were pertinent.

B. As thus applied to the factual situation presented by this case, it is clear that the Resolution is constitutional.

1. We emphasize, at the outset, that the only constitutional questions which are properly before the Court are those which relate to the particular questions which petitioner was asked, and to that construction of the Resolution which authorizes those questions. Petitioner's attempt to have this Court decide questions not presented

by this record, relating to other aspects of the Resolution, other witnesses, other questions, and other proceedings, is misconceived.

This Court has repeatedly said that it will not pass on issues of legislative validity until they come before it inescapably, in concrete form, with the factual background and record appropriate for decision of the Concrete question. The Court neither renders advisory opinions nor declares general constitutional doctrines unrelated to the setting of a particular case. Cf. *United States* v. *Rumely,* 345 U. S. 41. The same principle has been stated with somewhat different emphasis when this Court has insisted that a complainant has standing to challenge the validity of legislative acts only as they affect him directly. He cannot insist on the rights of others, whether their cases be actual or hypothetical. Or, in still another fashion, even if the Resolution might be applied in an unconstitutional manner, such an application could be separated out, leaving the constitutional applications.

2. It is clear that the Committee had the power, consistent with the First and Fifth Amendments, to ask the questions here involved. Congress, and its committees, may investigate fully in relation to possible legislation. So far as the investigation relates to the investigation of Communist propaganda activities, there is no vagueness. So far as the questions asked relate to the network of leadership within a national union suspected

of being Communist dominated, the First Amendment does not present a limitation. An officer of a union accepting public responsibilities with respect to the affairs of the union cannot contend that all information with respect to the persons who are officers of the union is privileged as a "political association". Moreover, this Court's decisions make it clear, in any event, that Communist Party activities are not ordinary political associations, and may, in the interest of national security, be examined into.

C. The Resolution, on its face, is constitutional, even if one goes beyond the confines of this case.

1. The Resolution on its face is reasonably definite. In the first place, there would seem to be no requirement of definiteness between Congress and its committees, as custom and practice demonstrate. Indeed, in view of the fact that a major purpose and function of the assignment of Congressional business to committees is to create a ready source of intelligence with respect to legislative activity, and to relieve Congress of the burden of overlapping and numerous committee assignments, it is clear that it would impose an intolerable burden on Congress if this Court were to hold that standing committee resolutions must meet normal criteria of definiteness.

The argument that, nonetheless, the Resolution must meet criminal statute standards of definiteness, is based on the view that the Resolution and

the criminal statute (2 U. S. C. 192) must be read together as an integrated criminal law. This is not sound. A witness who appears before a Congressional committee can be advised as to the matter under inquiry so as to determine the pertinence of a question irrespective of the generality of the Resolution establishing the Committee. Here, for example, the purposes of this particular investigation were a matter of public record.

But even if there are requirements of definiteness with respect to the resolution itself, the test would have to be a broad one, not the test applicable to criminal statutes. Just as in the case of criminal prosecution for violation of administrative regulations, it is the regulation which is tested for specificity, not the general standard. Compare, *e. g., Boyce Motor Lines* v. *United States,* 342 U. S. 337.

The Resolution here is sufficiently definite, by either standard. While, considered in isolation, some of its words may not have precise meanings, there can be little question that they are calculated to authorize the Committee to seek information concerning propaganda activities of groups which seek by illegal means to undermine the government of the United States. Thus, whether the petitioner adverted to the announced purpose of the inquiry or to the Resolution itself, he could tell that the questions asked him

were pertinent and that there was a meaningful area of investigation open to the Committee.

2. The Resolution on its face as thus construed does not violate the First Amendment. We have shown that in so far as the Resolution applies to Communist activities it is clearly constitutional. We further submit that as the Resolution is reasonably to be interpreted it is designed to authorize at least an investigation into the same kinds of evils which Communist propaganda and propaganda activities engender and represent. In our view, "subversive" and "un-American" "propaganda" and "propaganda activities" clearly comprehend Communist propaganda activities. Accordingly, the Resolution does not violate the First Amendment.

The fact that the Resolution may authorize an investigation into both illegal advocacy and speech which Congress may not constitutionally proscribe does not render the Resolution unconstitutional. For surely Congress may authorize one of its committees to investigate as to where it should and may attempt to draw the line between the legal and the illegal. This is particularly clear in view of the fact that legislation has in fact been both proposed and enacted in the field covered by the Resolution.

Moreover, even if there are indirect effects of the Committee inquiry—sanctions of public opinion on those brought before the Committee—

there would not be any violation of the First Amendment. First Amendment rights are not absolute. They do not preclude compelling testimony, even though there are collateral consequences to the witness. The need for first hand information as a basis for governmental action outweighs the interference with personal rights resulting from compelled disclosures. Particularly is this so where the disclosure sought is of the *ad hoc* nature involved here, and where the Court has already sustained the importance of dealing with various aspects of the problem posed by subversive propaganda and related activities.

The premise of petitioner's argument is that the "right to silence" is protected by the First Amendment. But the First Amendment does not create any such right. Even if it is accepted that disclosures before the Committee result in unfavorable publicity and discourage persons from subjecting themselves to the risk of similar unfavorable reaction to the expression of their views, the First Amendment is in no way violated.

D. The fact that one of the objects of the Committee may have been to expose and publicize subversive and un-American activity neither invalidates the Resolution nor the Committee's action in this case. In the first place, the existence of an intent to combat subversive activity by publicity does not mean that the inquiry is not also in aid of legislation. These purposes are not in-

consistent. This Court has rejected similar attacks upon Congressional committees. *McGrain* v. *Daugherty,* 273 U. S. 135; *Sinclair* v. *United States,* 279 U. S. 263. On this phase of the case, all that is necessary to sustain the Resolution and the Committee's action is the fact that at least one of the purposes of the inquiry was to assist in the recommendation or adoption of legislation.

Furthermore, the "informing function" of Congress, in itself, suffices to support the Committee's action, even if the sole purpose here were to expose subversive activity. It is clear, for example, that Congress, in the exercise of its regulatory power, may authorize an administrative agency to receive and publicize information. *Electric Bond & Share Co.* v. *Securities & Exchange Commission,* 303 U. S. 419. And this method of protecting the public interest by requiring the disclosure of information in fields subject to the power of Congress has been employed in a number of other statutes. We think it clear that the Constitution does not deny Congress the power to use its own investigative authority directly to accomplish the same end, nor to adopt a program of publicity and disclosure as a public safeguard against subversive propaganda which Congress does not wish to and perhaps cannot prohibit.

ARGUMENT

I

PETITIONER'S CONVICTION FOR REFUSING TO ANSWER QUESTIONS PUT TO HIM BY A SUBCOMMITTEE OF THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES DID NOT VIOLATE HIS PRIVILEGE AGAINST SELF-INCRIMINATION, BECAUSE PETITIONER DID NOT CLAIM THAT PRIVILEGE

A. PETITIONER SPECIFICALLY DISCLAIMED ANY RELIANCE ON THE PRIVILEGE AGAINST SELF-INCRIMINATION

Petitioner's first contention is that he claimed the privilege against self-incrimination in response to the questions in issue in this case; and that since the claim was proper, he cannot be convicted for refusal to answer. The verdict of guilty by the trial judge followed an explicit finding that petitioner did not claim the privilege, either in express terms, or in language which could, in its context, have reasonably been so understood; and, indeed, that petitioner specifically disavowed any such fear of incrimination (R. 225–227, quoted *supra*, p. 18). That finding, concurred in by the Court of Appeals (R. 356–357) is, we submit, amply supported by the evidence.

Petitioner did not at any point in his extended colloquy with the Committee indicate by any form of words that he feared that an answer to any

particular question would incriminate him. In fact, he specifically disavowed that his answers might tend to incriminate him, in the following language (R. 172)[7]:

> Mr. MOULDER. Do you mean to say you have people in your organization who have information that would subject you to criminal prosecution?
>
> Mr. EMSPAK. No; I don't, Mr. Chairman. As a basic proposition—and it has worked over the years and over the last few months as far as this committee is concerned—a slick job——
>
> Mr. MOULDER. Do you know them or not?
>
> Mr. EMSPAK. That does not concern this committee at all.
>
> Mr. MOULDER. Is it your feeling that to reveal your knowledge of them would subject you to criminal prosecution?
>
> Mr. EMSPAK. No; I don't think this committee has a right to pry into my associations. That is my own position.

On repeated occasions throughout his testimony petitioner made statements to the effect that the Committee had no right to pry into his associations, which seems clearly to have been his basis, at that time, for not answering the Committee's

[7] Whether this disclaimer of the privilege against self-incrimination be taken to apply to a single question, or be considered along with all the other statements of petitioner to relate to his failure to answer all sixty-eight questions (as we contend it should be), the final result is the same. Any one of the counts would suffice to support the judgment. *Sinclair* v. *United States*, 279 U. S. 263, 299.

questions (R. 168, 172, 178, 179). He consistently addressed his objection to the whole inquiry and the authority of the Committee, and not to any specific incriminating propensities of the particular questions asked (R. 172, 174, 178); many of his remarks were, in substance, simply a castigation of the Committee for its past and present activities (R. 169, 172, 192, 194). In short, although petitioner, an editor and official of long standing in the union, represented by counsel, made extensive remarks apparently patterned and preconceived for the occasion,[8] at no time during his questioning did he use the simple, familiar words which would have clearly and unambiguously conveyed to the Committee, and to the court, that he feared that his answer to a particular question would incriminate him. Indeed, he seems fairly carefully to have avoided the use of such language, although he makes, and has made, no claim that this verbal formula is or was unknown to him. In these circumstances, the trial court was amply justified in its conclusion that petitioner did not intend to claim the privilege.

Petitioner makes much of the fact that, at one stage of the proceeding while engaged in an extensive upbraiding of the Committee not directed at any particular question and in disregard of the

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[8] Very similar language was used by other witnesses in the same investigation. See *Quinn* v. *United States*, 203 F. 2d 20 (C. A. D. C.), and *Bart* v. *United States*, 203 F. 2d 45 (C. A. D. C.), both pending on certiorari before this Court.

fact that he was being asked questions while talking, he said (R. 168):

> Because of my interest in what is going on these days, because of the activities of this committee * * * because of the hysteria, I think it is my duty to endeavor to protect the rights guaranteed under the Constitution, primarily the first amendment, supplemented by the fifth. This committee will corrupt these rights.

On its face, this declaration shows only an intention to "protect," not the witness, but constitutional rights in the abstract against committee encroachment. The trial court was amply justified in concluding, as it apparently did, that this was not intended as a claim of privilege as to any of the questions asked. Its context (see pp. 10–18, *supra*) indicates that it was part of a speech the petitioner was determined to make, and that it was directed at the general authority of the Committee to question him, rather than at the specific incriminating propensities of any particular question. The oblique reference to the Fifth Amendment could as easily refer to the right to due process of law as to the privilege—as six of the judges below suggested in the companion *Quinn* case (203 F. 2d at 23–24, 44). The privilege against self-incrimination is neither actually nor colloquially understood as a "supplement" to the First Amendment. Petitioner's general and passing reference to the Fifth Amendment clearly did

not suffice to put the subcommittee on notice that petitioner intended to assert his claim of privilege against self-incrimination as to all the questions.[9]

Petitioner also argues (Br. 171) that he claimed the privilege, in response to questions whether he knew certain officials, in the following words (R. 171):

> Mr. Chairman, on these questions, which are all essentially the same, of course, when this hearing was announced according to the press reports, at least, it was announced because this committee presumably was interested in finding out things with references to individuals in our organization by using whatever means it has at its disposal, and for the purpose of trying to perhaps frame people for possible criminal prosecution.

Apparently, even petitioner did not think that this was a claim of privilege when he argued his motions for acquittal and a new trial in the District Court (see R. 225). In any event, the statement now relied upon was almost immediately thereafter followed by the Committee's query to petitioner, "Is it your feeling that to reveal your knowledge of them would subject

[9] Nor does it help petitioner's case (see Br. 170) to read this Fifth Amendment reference in conjunction with his earlier charge that the committee was trying to harass the union and its officers and members. Even if the charge were true, there would be no danger of incrimination to petitioner for that reason alone.

you to criminal prosecution?" to which he replied, "No. I don't think this committee has a right to pry into my associations. That is my own position" (R. 172).[10]

Petitioner argues in this connection (Br. 183–184) that, after he had made a claim of privilege, the Committee could not probe the reasons for the claim. Apparently petitioner concedes that his response to the Committee may embarrass his present argument, and thinks the case may be saved merely by disregarding a significant answer. However these arguments are resolved, it is clear that the Committee had a right to clarify for itself just what petitioner was saying when he made a statement that was at best a very equivocal claim of privilege. There is obviously a difference between trying to understand what petitioner was saying, and insisting, if he claimed the privilege, that he disclose the basis of his claim.

It is impossible to overemphasize the central fact on this phase of the case: That in a protracted colloquy between petitioner and the Committee, his major purpose was to refuse to give testimony with respect to what he called his political associations. This refusal was not based on any fear of possible criminal prosecution. It

[10] When later, petitioner kept insisting that he was making the same answer, not only as to his association with other individuals but as to his membership in the Communist Party, the only reasonable assumption is that he was not asserting a claim that his testimony would tend to incriminate him (R. 194–195).

was based solely on petitioner's view that his associations did not have to be disclosed to anyone, and certainly not to a committee which "stooped to interfere in the partisan affairs of a local union" (R. 168). This is not and should not be tortured into a claim of privilege against self-incrimination merely because of the chance use of language which, in a different context, might, at best, be consistent with a claim of privilege. In the last analysis, the question whether petitioner claimed his privilege against self-incrimination is the basis for refusing to answer the question asked him is one of fact. That question has been resolved against him both by the trial court which considered the evidence, and by the Court of Appeals which reviewed the case.

B. PETITIONER'S FAILURE TO CLAIM THE PRIVILEGE BEFORE THE COMMITTEE PRECLUDES HIS RELIANCE UPON IT NOW

It is clear that petitioner cannot rely on the privilege against self-incrimination now if he did not rely on it before the Committee. *United States* v. *Murdock,* 284 U. S. 141. There, the defendant was indicted for wilful failure to supply information at a hearing before an internal revenue agent, as the applicable statute required. At the hearing, he had specifically claimed possible incrimination under state law, but disclaimed federal incrimination. His later attempt to rely on his federal privilege was rejected by this Court, which stated (284 U. S. at 148):

> The validity of his justification depends, not upon claims that would have been warranted by the facts shown, but upon the claim that actually was made. The privilege of silence is solely for the benefit of the witness and is deemed waived unless invoked.

Essentially the same view is taken by Wigmore (8 Wigmore, *Evidence* (3d ed. 1940) § 2268):

> The privilege is merely an *option of refusal,* not a prohibition of inquiry. * * *
>
> Hence it follows that when an *ordinary witness* is on the stand, and a criminating fact, relevant to the issue, is desired to be proved through him, the question may be asked, and it is for him then to say whether he will exercise the option given him by the law. It cannot be known beforehand whether he will refuse. Besides, to prevent the question would be to convert the option into a prohibition.
>
> This principle would seem incapable of dispute.

Nor is it enough that a general objection was taken to the authority of the committee, or the materiality of a particular question asked. Cf. *United States* v. *Skinner,* 218 Fed. 870, 876 (S. D. N. Y.); *In re Knickerbocker Steamboat Co.,* 139 Fed. 716, 719 (S. D. N. Y.). See also *Vajtauer* v. *Commissioner,* 273 U. S. 103, 113.

These authorities show that the privilege must be claimed, and must be clearly enough claimed

so that there is no doubt that it was claimed. Such a rule is supported by the fundamental policy consideration that there is a primary obligation to testify which is "necessary to the effective functioning of courts and legislatures" (*United States* v. *Bryan*, 339 U. S. 323, 331; *Blair* v. *United States*, 250 U. S. 273, 281; *Blackmer* v. *United States*, 284 U. S. 421, 438). The privilege against self-incrimination, however deeply rooted, is an exception to that obligation (cf. Marshall, Ch. J., in *United States* v. *Burr* (*In re Willie*), 25 Fed. Cas. No. 14,692e, at p. 39) and must therefore be interpreted with that obligation in mind.

II

PETITIONER'S REFUSAL TO ANSWER THE QUESTIONS WAS WITH KNOWLEDGE THAT THE COMMITTEE WAS REQUIRING HIM TO ANSWER

A. PETITIONER "REFUSED" TO ANSWER

It is clear that, in the view of the majority of the court below, a witness before a Congressional committee who raises an objection to a question must in some manner be clearly apprised that his objection has been rejected and that he is being required to answer.[11] That is, it is not enough

[11] Six of the nine members of the court below specifically took this position in the companion case of *Quinn* v. *United States*, 203 F. 2d 20 (C. A. D. C.), pending on certiorari, O. T. 1953, No. 66, which was decided simultaneously with the instant case; and in which there was a remand for retrial to determine, *inter alia*, whether the facts in that case showed

to sustain a contempt conviction that the witness, on some spurious basis, failed to answer a question. The committee may, if it chooses, accept a witness' objection, however unsound it may be, and turn to other subjects of inquiry. In such circumstances, of course, it would be unfair to contend later that the witness has been in contempt of the committee. The problem in the present case arises because petitioner disputes the Government's contention that it was made clear to him that his objections were rejected and that he was being required to answer.

It is not clear that petitioner seriously presses the contention that this must be done by the rigid formula of a specific direction to answer, followed by a rigid refusal. If he does, it is clear that the contention is not sound.

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that the witness was clearly apprised of his obligation to answer.

Three of those six judges concurred in the present case, and took the view that the "record contains sufficient evidence to support a finding that [petitioner] deliberately and intentionally refused to answer and thus to support the judgment" (R. 361). The other three of the *Quinn* majority, however, dissented here, stating that as in *Quinn*, it was not clear that the trial judge's finding of guilt was based on a finding that the witness understood that he was being required to answer (R. 361–362). The three remaining judges, Clark, Proctor, and Miller, in the majority in the present case, but dissenting in *Quinn*, apparently thought that the only issue was whether the witness failed to answer the question and whether, in fact, there was a sufficient legal basis for this refusal. See R. 355–356. Cf. *United States ex rel. Cunningham* v. *Mathues*, 50 F. 2d 411 (C. A. 3).

A Congressional investigation is an important legislative function; it is not a game of wits between committees and witnesses. The measure of witnesses' rights before committees is whether the substance of the important protections to which they are entitled has been accorded, not whether some mechanical verbal formula has been used. Certainly this is so where, as here, there is no evidence that, with respect to the particular witness, the committee attempted in any way to abuse its powers. It would seem clear that so long as the witness understands that his objections are rejected and that he is being required to answer, the particular form of words used to apprise him of this fact is unimportant.

To be sure, where Congress has itself imprisoned witnesses for contempt, it has given the witnesses an opportunity to purge themselves before imposition of imprisonment. Judge Bazelon, in concurring in the *Quinn* case below, argues that 2 U. S. C. 192 requires a similar construction because a contempt proceeding which was pending in 1857 at the time of its enactment followed this practice. Petitioner adopts this argument (Br. 188).

The practice in direct Congressional contempt proceedings, however, is not relevant. The justification for such proceedings is to remove an interference with the legislative process. Hence, Congress cannot imprison for the purpose of punishment nor can it imprison for any period

beyond its own term of life. See *Marshall* v. *Gordon*, 243 U. S. 521, 542–545; Potts, *Power of Legislative Bodies to Punish for Contempt* (Part II), 74 U. Pa. L. Rev. 780, 783. Devices to help insure that an answer from the recalcitrant witness will be forthcoming therefore are reasonable and necessary. But the offense described in 2 U. S. C. 192 is to *punish* the act of interfering with the business of Congress. The harm, obviously, is done as soon as the witness knows that his objections are rejected and that he is being required to answer, but still does not do so. The contempt statute was enacted specifically to permit punishment for this harm beyond the term of the particular Congress interfered with, to a time when it was clear that the witness' desire to comply with the demand made earlier would serve him no stead. See 34th Cong., 3d Sess., Globe, p. 406; Eberling, *Congressional Investigations* (1928), pp. 302–307. There is no evidence that the offense would be less because the offender repented, although, as with all offenses, this might be relevant in imposing the sentence.

We submit, in short, that there is no basis for insisting on the rigid formulation of a specific direction to answer followed by another refusal. Therefore, the only question on this phase of the case is whether the evidence is sufficient to justify the conclusion that petitioner's refusals to answer were in the face of his knowledge that his objections thereto had been rejected. We suggest,

however, that whether the more or the less severe test is used is really irrelevant in this case because the record amply meets either standard.

The most cursory examination of the record of petitioner's appearance before the Committee shows, beyond any doubt, that he clearly understood that the Committee regarded his so-called answers as being refusals to answer, and that he was expected to answer the questions despite his repeated objections as to the Committee's lack of authority to ask them. For example, the very first of the questions involved in the present indictment ("Are you acquainted with Joseph Persily?") was repeated six times (R. 167–170), only to be met with refusals which petitioner acknowledged were refusals. In the course of this extended colloquy, petitioner made what were apparently prepared charges against the Committee, although the chairman, Congressman Moulder, indicated as petitioner was making these charges, that he was not answering the question. Finally, when petitioner appeared to have ended his statement, Congressman Moulder, in what was unquestionably a plain rejection of the claimed basis for refusing to answer, then stated (R. 169)—

> * * * And your statements are preposterous. The purpose of this committee is to expose communism as it exists in this country. What is the question?

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Mr. TAVENNER. Are you acquainted with a Joseph Persily?

Mr. EMSPAK. For the reasons I stated before, I answered it.

Mr. MOULDER. Then you refuse to answer the question?

Mr. EMSPAK. No. I answered it.

Mr. TAVENNER. Are you or are you not acquainted with Joseph Persily?

Mr. EMSPAK. I answered the question.

Mr. TAVENNER. Your replies are a refusal to comply with the request to answer it?

(Witness confers with his counsel.)

Mr. MOULDER. *The record will reveal that you have not answered the question.*

Mr. EMSPAK. I have answered it to the best of my ability under the circumstances. [Italics added.]

* * * * *

Nor is there any doubt that the Committee's attitude was consistent on this point. For later, the following colloquy occurred (R. 194):

Mr. TAVENNER. Did you, as a member of the Communist Party, attend the trial of Earl Browder at Communist Party headquarters in New York City?

Mr. EMSPAK. I answered that.

Mr. MOULDER. You mean you refuse to answer for the same reasons you gave at the beginning?

Mr. EMSPAK. That is correct. I answered the best way I know how.[12]

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[12] See also colloquy at R. 174, referred to *supra*, pp. 16–17.

These colloquies show, beyond argument, that the Committee made it clear to petitioner that the basis for his claim was rejected, and that his "answers" were understood by all concerned as being refusals to answer. They also show that, even if the Court accepts the more severe standard suggested by Judge Bazelon, namely, that there is no "refusal" until the witness is specifically advised that his answers are unsatisfactory and is specifically directed to answer the questions, petitioner's conviction here still must stand. For, over and over again, during his testimony, petitioner was apprised that the Committee thought he had not answered, both by the chairman and by the committee counsel, and that he was thereafter expected to give answers and not reasons for not answering. Even the dissenting judges below agreed that "the record reveals matters which might be said to reflect an adverse ruling by the Committee on the appellant's objections" (R. 362).

B. IT WAS PROPERLY FOUND THAT PETITIONER REFUSED TO ANSWER

Petitioner urges, however, that even if the evidence might sustain the view that he "refused" to answer the Committee's questions, still his conviction must be reversed and the case remanded, because there was no express finding on this point by the trial court (Br. 191–193).

Since this case was tried by the district court without a jury, there were, of course, no instructions to the jury. Nor was the district judge required to make special findings; a simple verdict of guilt would have sufficed. See F. R. Crim. P., Rule 23 (c). Petitioner did not request the court to make any express or specific finding as to whether petitioner's responses to the questions asked him constituted a "refusal". The issue of fact principally contested in the district court, and to which its opinion is principally devoted, was whether petitioner's refusal to answer the questions was based on a claim of privilege against self-incrimination.

In any event, we believe it clear that the district court's conclusion that petitioner was guilty of violating the statute rested upon a finding that he refused to answer the committee's questions. Thus, the trial judge pointed out that "It is reasonable to conclude that the [petitioner] fully intended his examination should proceed and terminate as it actually did" (R. 224), and that ["Petitioner] lost no time in disputing the powers, the right and authority of the committee to inquire into his beliefs, his associations, or as he stated it, anything else" (R. 225). The trial judge, further, endorsed the Committee chairman's view that petitioner's conduct "disclosed a flagrant attitude toward the Committee" (R. 226). Finally, in ruling that petitioner had

not claimed the privilege against incrimination, the trial judge stated his view that petitioner's response had been that of one "who has something to hide, or who wishes to protect others, or through pique refuses to furnish information in disregard of his duty, in defiance of a Congressional Committee, as a challenge to its powers and authority, or for distrust of its aims, its motives and its good faith" (R. 227). It is clear from the whole of his opinion that he thought that petitioner's conduct reflected all of these alternatives.

We submit that, in view of this opinion, it is plainly unsound to argue that it was not found that petitioner understood that he had a duty to answer; and that, in spite of that fact, and in spite of further opportunity to answer, he refused to do so. It would elevate form above substance to remand this case now merely because the trial judge did not state this finding in so many words, particularly when no issue had been made of the point. Cf. *Alger* v. *United States,* 171 F. 2d 667 (C. A. 7). Moreover, such a finding is implicit in the general verdict of guilty; the district court stated in its opinion that the petitioner's refusal to answer was both flagrant and premeditated. It follows, therefore, that if this finding is supported by the evidence, as it surely is, there is no basis for disturbing the conviction. *Blunden* v. *United States,* 169 F. 2d 991

(C. A. 6); *Seefeldt* v. *United States*, 183 F. 2d 713 (C. A. 10).[18]

It is clear that the substance of the colloquy between the petitioner and the committee was a direction to petitioner to answer, which he refused to obey. As we have pointed out above, it is apparent that petitioner had decided to put to the test the validity of his grounds for not answering. This meant that he had to refuse to answer on the basis which he wanted to have tested. He did this, and the district court recognized that he did so. We submit that he ought not now be permitted to avoid that test on the ground either that he did not understand that he was being required to answer and refused to do so, or that the district court did not make a proper finding as to his understanding.

III

THE COMMITTEE ON UN-AMERICAN ACTIVITIES WAS EMPOWERED TO REQUIRE PETITIONER TO ANSWER THE QUESTIONS INVOLVED HERE

Petitioner has devoted a major portion of his brief to an attack upon the Resolution authoriz-

[18] Moreover, the issue whether petitioner's refusal was wilful could only be determined from an assessment of the printed record; and, therefore, although it would have been proper, as a matter of discretion, for the court below to remand the case to the district court, there was no requirement that it do so. Cf. *Quinn* v. *United States*, 203 F. 2d 20, 24–25 (C. A. D. C.), pending on certiorari before this Court, No. 66; *Bowles* v. *Carnegie-Illinois Steel Corporation*, 149 F. 2d 545, 546 (C. A. 7); *British America Assur. Co. of Toronto, Canada* v. *Bowen*, 134 F. 2d 256, 260 (C. A. 10).

ing the Committee's investigation, and upon Committee procedures generally, without regard to the specific questions which were asked him or to the particular inquiry out of which his citation for contempt arose. Petitioner thus seeks to have this Court decide broad and basic Constitutional questions relating to the power of Congressional committees to investigate and elicit testimony in aid of their investigations, as well as to the application of the First Amendment to this Congressional power.[14]

We should first like to point out that the power of the House Committee on Un-American Activities to investigate, under the Resolution here involved, has been challenged before and the validity of that Resolution has been consistently upheld. *United States* v. *Josephson,* 165 F. 2d 82 (C. A. 2), certiorari denied, 333 U. S. 838; *Barsky* v. *United States,* 167 F. 2d 241 (C. A. D. C.), certiorari denied, 334 U. S. 843; *Eisler* v. *United States,* 170 F. 2d 273 (C. A. D. C.), certiorari granted, 335 U. S. 857, removed from

[14] Petitioner did not attack the validity of his conviction on these grounds in the Court of Appeals, although he did present in his petition for a writ of certiorari the questions, "Whether House Resolution 5, as construed and applied herein, abridged the petitioner's freedom of speech, press and assembly in violation of the First Amendment to the Constitution" and "Whether the First Amendment protects a witness before a Congressional committee against the compulsory disclosure of the identity of trade union officials with whom he is associated and of his political views and affiliations" (Pet. 10, see also Pet. 38–40).

docket, 338 U. S. 189, certiorari dismissed, 338 U. S. 983; *Marshall* v. *United States,* 176 F. 2d 473 (C. A. D. C.), certiorari denied, 339 U. S. 933; *Lawson* v. *United States,* 176 F. 2d 49 (C. A. D. C.), certiorari denied, 339 U. S. 934; *Kamp* v. *United States,* 176 F. 2d 618 (C. A. D. C.), certiorari denied, 339 U. S. 957; *Dennis* v. *United States,* 171 F. 2d 986 (C. A. D. C.), affirmed, 339 U. S. 162; *Morford* v. *United States,* 176 F. 2d 54 (C. A. D. C.), reversed on another point, 339 U. S. 258.

On this aspect of the case, the Government takes the position that only two questions are properly before this Court: (1) whether the questions which were asked petitioner come within the scope of the authority granted to the House Committee on Un-American Activities by the Resolution creating it and defining its powers; and (2) if so, whether that Resolution, as so construed, is unconstitutional, in that (a) it exceeds the investigatory and legislative power of Congress, (b) it is too vague and indefinite, or (c) it abridges rights secured to petitioner by the First Amendment. In our view, petitioner's attack upon Committee activities with respect to other parties and to other questions which are not before this Court at this time raises issues which on this record are abstract and hypothetical. As we shall show, it is well settled that the validity of the Resolution only insofar as it authorized the questions asked petitioner is properly before the

Court, and that petitioner has no standing to challenge the propriety of questions asked other witnesses at other times (*infra,* pp. 66–71). We shall further show that, in any event, the Resolution, on its face, is Constitutional and does not violate the First or Fifth Amendments (*infra,* pp. 77–110).

A. THE QUESTIONS WHICH WERE ASKED PETITIONER CAME WITHIN THE SCOPE OF THE COMMITTEE'S AUTHORITY

Preliminarily, we believe it important to emphasize the nature of the particular questions which petitioner was asked and which he refused to answer. Specifically, petitioner's conviction rests on his refusal to answer 68 questions put to him by the House Committee on Un-American Activities after he had been subpoenaed by that committee and sworn as a witness. Fifty-eight of these questions asked, in substance, that he state whether or not he knew certain named individuals and could disclose whether or not those individuals presently held or had held certain positions in UE (R. 5–12), a union in which he was a national officer. Eight of the questions related to petitioner's possible membership in the Communist party, and to various evidences of that membership (R. 12–13); and the other two dealt with his "affiliation" with the National Federation for Constitutional Liberties and his "association" with the Civil Rights Congress (R. 12).

1. *The express purpose of the inquiry was to investigate into Communist infiltration into defense industries in connection with a recommendation of legislation on this subject*

The authority of the Committee to place under inquiry the particular matters here involved, and to subpoena witnesses in pursuance of the inquiry, derives from the House Resolution constituting the Committee on Un-American Activities, which provides, in relevant part, as follows:

> The Committee * * * is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The purpose of the specific hearing at which petitioner was asked the particular questions here involved was stated by Committee counsel, at the very outset of such inquiry, as follows:

> Mr. TAVENNER [Committee counsel]. Mr. Chairman, the purpose of this hearing is to inquire into the question of Communist affiliation or association of certain

members of Local 601 of the United Electrical, Radio and Machine Workers of America, CIO, which is engaged in work at industrial plants important to the national defense.

The advisability of recommending legislation providing for security standards, and the advisability of tightening present security requirements in industrial plants working on certain Government contracts, was considered by the committee in both its open and executive session on June 6, 1949, as a result of the testimony of Leona and Joseph Franey and Loren G. Haas.

It will be remembered that Mr. Wood, the chairman of this committee, offered H. R. 3903, section 2 of which would make it an offense for any individual employed in connection with the performance of any national defense contract "(1) to become or remain a member of, or affiliated with, the Communist Party of the United States of America, or any organization which shall have been designated as subversive by the Attorney General; (2) to contribute funds or services to the Communist Party of the United States of America or to any organization which shall have been designated as subversive by the Attorney General; or (3) to advise, counsel, or urge any other individual employed in connection with the performance of any national defense contract to perform, or to omit to perform, any act if such act or omission would constitute a violation of clause (1)

> or (2) of this section." This bill was referred to this committee.
>
> It is the further purpose of this hearing to develop facts for the committee's consideration in connection with this resolution.[15]

The question under Committee inquiry was thus, in short, the advisability of passing certain legislation to deal with the concrete danger that Communists, and those who could be used for their purposes, might be gaining a foothold in national defense plants through Communist control of unions. Such a foothold might well be used both for propaganda and direct espionage or sabotage purposes. H. R. 3903, which deals with this problem and which was expressly cited by Committee counsel, had been referred to the Committee on March 30, 1949 (95 Cong. Rec. 3546), prior to the beginning of these hearings, and prior also to the Franey testimony of June 6, referred to in the statement of Committee counsel. It thus appears clear that at least one of the purposes, if not the primary purpose, of the inquiry here was to obtain information with respect to the recommendation of specific legislation referred to the committee.

2. *This inquiry came within the language of the Resolution granting the Committee its authority*

Clause (i) of the Committee Resolution authorizes investigation into "the extent, character,

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[15] See n. 3, pp. 7–8, *supra*.

and objects of un-American propaganda activities in the United States." Clause (ii) authorizes investigation into "the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries * * * and attacks the principle of the form of government as guaranteed by our Constitution * * *."

We shall show (*infra,* pp. 77–90) that in context the language of these clauses has a definite content, and that petitioner's attack upon the alleged ambiguity of the words "un-American" and "subversive", as a basis for defining the scope of the investigatory authority of a committee of Congress, is without foundation. However, we do not believe that it is necessary in this case to define the outermost limits of these terms. For, if anything was clear in 1949, or is clear today, it is that these words aptly describe and unquestionably include Communist activities designed to subvert our form of government. Accordingly, for the purposes of this case, inasmuch as the Committee's inquiry at issue here was into the extent of Communist infiltration into defense plants, there is no doubt that the inquiry was authorized by the Resolution.

As the Court of Appeals for the Second Circuit has said (*United States* v. *Josephson,* 165 F. 2d 82, 88, certiorari denied, 333 U. S. 838):

> At the very least the language of the authorizing statue permits investigating the advocacy of the idea that the Government

> or the Constitutional system of the United States should be overthrown by force, rather than modified by the peaceful process of amendment of the Constitution set forth in Article V.

See also *Barsky* v. *United States,* 167 F. 2d 241 (C. A. D. C.), certiorari denied, 334 U. S. 843. And this Court has itself reviewed too recently the role of the Communist Party and its advocacy of the overthrow of this Government by force and violence to require rebuttal of any contrary argument here. See *Carlson* v. *Landon,* 342 U. S. 524; *Harisiades* v. *Shaughnessy,* 342 U. S. 580; *Adler* v. *Board of Education,* 342 U. S. 485. *American Communications Association* v. *Douds,* 339 U. S. 382; *Dennis* v. *United States,* 341 U. S. 494. We cannot conceive that anyone would doubt that the advocacy of the overthrow of this Government by unconstitutional means is encompassed by the terms "un-American" and "subversive." Certainly, no one could reasonably suggest that a Resolution which authorizes a Congressional committee to investigate "un-American" and "subversive" activities does not authorize the committee to investigate into the extent of Communist infiltration in defense plants. Indeed, the Internal Security Act of 1950, 64 Stat. 987, 50 U. S. C. (Supp. V) 781, contains, in its provisions for "Subversive Activities Control", a finding by Congress that—

* * * * *

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) the Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of a world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

In sum, we think it too clear for extended discussion that, in so far as the words "un-American" and "subversive" are concerned, they clearly embrace Communist activity, the subject of the inquiry here.

In like manner, the authority of the Committee to investigate under clause (i) the "extent, character, and objects of * * * propaganda activities", or, under clause (ii), the "diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries * * *," covers activities such as attempts by Communists to gain a foothold in national defense plants through the device of infiltration into a labor union. The fact is that Communists operate through propaganda and advocacy. To

investigate "propaganda" and "propaganda activities" requires that an inquiry be made into the nature of the contents generally, and into the identity of those who disseminate the propaganda.[16] As is shown below (*infra*, pp. 63–65), there is considerable evidence, with which Congress is familiar, that Communists have used their positions in unions for propaganda purposes, through control of union newspapers and in handling grievance procedures and strikes. There is, also, evidence that the business of making propaganda has been combined with open and covert solicitation for Party membership and for developing possible espionage and sabotage. These activities are so closely related to propaganda that they must be regarded as clearly within the meaning of "propaganda activities." And this is, of course, the practical construction which the Committee itself has placed upon the terms of its Resolution, as petitioner's brief abundantly demonstrates.

But even if the kinds of activity being investigated in this case are not "propaganda activities" *per se,* they certainly are an aspect of the "extent, character, and objects" of such activities, which

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[16] If a distinction is to be drawn between the "propaganda", covered in clause (ii) of the Resolution, and the "propaganda activities" of clause (i), then, necessarily, propaganda activities must refer to those things which experience has shown are the devices, mechanism, and institutions used by propagandists (particularly Communist propagandists) to accomplish and make more effective the purposes of their propaganda.

under this Resolution, are a proper subject of inquiry. For it is clear that these words were intended to permit comprehensive inquiry into the success of the propaganda activities described. "Extent" calls, at least, for a measure of the volume of such activities. "Character" calls, at least, for a measure of the relative inflammatory nature of such activities, how much persuasion, how much violence, how much political strife, how much propaganda in the narrow sense. And "objects" calls for a study of the basic purposes sought to be accomplished, which very well might include the use of people recruited through dissemination of propaganda who could be induced to collect secret industrial data and make themselves available for sabotage.

In short, in order to investigate Communist propaganda, it would seem impossible not also to investigate the means by which the disseminators of the propaganda have obtained their positions of power, the extent to which these positions have been used for propaganda purposes, the relationship between propaganda and other activities, and the extent to which Communists achieve their goals by the use of propaganda. Indeed, the specific questions asked petitioner at the instant hearing demonstrate the relevance and importance of such information. *Infra*, pp. 61–66.

Moreover, this view of the authority of the Committee derives further support from clause (iii)

of the Resolution, which authorizes the investigation of "all other questions in relation" to the questions covered by the first two clauses "that would aid Congress in any necessary remedial legislation." This obviously leaves discretion to the Committee to probe aspects of propaganda problems, which, though not directly propaganda, have a great deal to do with the effectiveness of particular propaganda in accomplishing its purposes.

It is certainly clear that Congress, with knowledge that the Committee has construed the words of the Resolution in this way, has permitted the Committee to continue to exist under precisely the same charter. For example, Congress had knowledge that the Committee had, in 1947, conducted an investigation into the extent, character, objects, and methods of Communist infiltration into unions, and had obtained information about political strikes and possible espionage. (See *infra,* pp. 63–66). Congress had knowledge, also, that the Committee during the same session of Congress had conducted an intensive investigation of Communist espionage in the United States Government and into Communism in the motion picture industry, and had subpoenaed witnesses for those purposes (Hearings, Committee on Un-American Activities, 80th Congress).[17] In the

[17] For a summary review of the matters taken up by the Committee during each Congress since 1945, see Carr, *The House Committee on Un-American Activities*, 1945–1950.

face of this knowledge, the charter of the Committee was nonetheless renewed in 1949 at the opening of the 81st Congress (during which petitioner was called).

The question here is basically one of determining whether this inquiry represented a valid exercise by the Committee of the authority given it by Congress. Consistent Congressional reenactment of a charter to what is certainly a well-known—to Congress as well as to the general public—committee forecloses any argument, as applied to this case, that the Committee erroneously interpreted the will of Congress in construing the Resolution to mean that it could investigate the possibility and techniques of Communist domination of a union important in national defense plants. Compare *United States* v. *Rumely,* 345 U. S. 41, 47–48. To accept such an argument would, we submit, clearly disregard every indication that Congress has given that the House Committee on Un-American Activities has been authorized by it to investigate the nature and scope of Communist propaganda activities, in the broad sense, designed to subvert the present form of government of the United States.

3. *The questions which petitioner refused to answer were within the scope of the inquiry*

Since at least one of the subjects of the inquiry was the advisability of certain legislation,

and since the Committee was authorized to submit that subject matter to inquiry, there can be no serious argument that the questions which petitioner refused to answer were not "pertinent to the question under inquiry."

The proposed legislation (H. R. 3903) related to work in defense plants by members of the Communist Party and of its organized supporters, and attempts by others, presumably including union officials, to encourage defense plant workers to support the Party or its "fronts". The further legislation, which the Committee's own experience had suggested, related to tightening security requirements in defense plants, with special reference to access to such plants by union officials who had not been subjected to the safeguards imposed on regular employees. It is plain that these two suggestions were related, and that any thorough investigation of the legislation introduced in the House would canvass the need for the latter provisions. Both, in fact, were recommended by the Committee in its annual report (*Annual Report of the Committee on Un-American Activities for the year 1949,* pp. 23–24), and, with modifications, H. R. 3903 found a place in the Internal Security Act of 1950, 64 Stat. 987, 992, Sec. 5, 50 U. S. C. (Supp. V) 784.

With this as the matter under inquiry, it appears that petitioner was asked a series of questions related to the organization and structure of

UE, all of which he answered. Following this, he was asked the questions now at issue. As we have indicated (*supra*, p. 51) most of these were whether he knew certain named individuals who were thought to be district organizers or international representatives of UE. The remaining questions dealt with petitioner's possible membership in the Communist Party and his possible association with two groups alleged to be Communist front groups.[18]

If the Committee were to determine the need for the proposed legislation, it was obviously pertinent to know if a union like UE, which had a sizeable membership in defense plants, was Communist dominated. It was pertinent to know also how the Communist domination made itself effective: whether only through the propaganda line in the UE News or by oral advocacy, or whether this was in conjunction with the selection of district organizers and international representatives, who served as liaison between the national headquarters and locals, and who were in a position thereby (a) to help formulate the thought of union members on issues as to which the union took a position, and (b) to adjust labor disputes and grievance policy to the sometimes delicate de-

[18] After the colloquy on these questions, the Committee went on to ask petitioner about his work as editor of the UE News, and the circumstances accounting for its consistent adherence to the Communist Party line. These questions petitioner answered.

mands of the Party line and the possible demands by the Soviet Union for information about American industry.

Indeed, the Committee's own earlier investigations indicated the need for careful inquiry into this area before reaching conclusions on the suggested legislation. In 1947 hearings conducted by the Committee, several witnesses had given testimony about UE. Among other things, it was testified that the national board of UE had unsuccessfully attempted to revoke the charter of one of its locals immediately after the local board had waged a successful fight against a Communist faction among its own membership. *Hearings Regarding Communism in Labor Unions,* I House Committee on Un-American Activities, 80th Cong., p. 149. There was testimony that there had been open solicitation of Communist Party memberships by UE officials (*id.,* p. 161); that certain of the international organizers of the union were Communists (*id.,* p. 171); that there had been contributions made in the name of the union to Communist "front" organizations and simultaneous refusal to support non-"front" groups (*id.,* pp. 159, 180, 181); and that resolutions following the Communist Party line had been adopted in the name of the union as a result of the efforts of Communists in the union (*id.,* pp. 159-160, 180, 185). It was pointed out that Communist effectiveness even in the local had been quite out of

proportion to the number of Communists in the union (*id.*, pp. 164, 165, 167). It was pointed out also that the local union newspaper followed the Party line (*id.*, p. 174), and that there was a remarkable similarity of approach as between several of the papers put out by unions reputed to be Communist-dominated (*id.*, p. 168). It was stated that the ultimate Party interest was in swaying political thought (*id.*, p. 184), which often increased the difficulties of orderly settlement of grievances (*id.*, pp. 162–163). And there were predictions by two witnesses, with long experience in the union, that there would be dangers of sabotage and political strikes in the event of armed conflict between the United States and the Soviet Union (*id.*, p. 17, 185–186).[19]

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[19] Similar testimony was developed before the Committee with respect to Local 248 of the United Automobile Workers in connection with inquiries into the 1946 strike at the plant of the Allis-Chalmers Company, at Milwaukee. See Hearings Regarding Communism in Labor Unions, *supra*, pp. 1–60. At pages 6–7 of those Hearings, an unfavorable complaint of one of Allis-Chalmers' employees is reported, and gives some idea of Party technique:

"What is the idea, I call Owen Lambert in on a grievance, expecting to get a raise, or the right price on this job I am working on, and he talks to me hour on hour about joining the American Youth for Democracy, or he wants to sell me a subscription to the New Masses or to In Fact, or the Daily Worker, and he gives me booklets to read, and we never get around to the handling of my grievance." In Carr, *The House Committee on Un-American Activities, 1945–1950* (1952), pp. 47–49, a summary analysis is made of these hearings on Communism in labor unions.

It would seem impossible even to argue about the pertinence of fuller and additional data of this nature, particularly when it was sought from a witness, like petitioner, who concededly occupied an important position in the Union.[20]

To summarize, it is clear that the questions which were asked petitioner came within the scope of the Committee's authority because it is clear that an investigation into Communist infiltration into defense plants is within the scope of the Resolution, and that the particular questions asked were pertinent to this limited investigation.

B. THE RESOLUTION, AS APPLIED HERE, IS CONSTITUTIONAL

1. *The only constitutional questions properly before the Court are those arising out of the particular questions which petitioner refused to answer*

We emphasize that the only constitutional questions which are properly before this Court are those which relate to the particular questions which petitioner was asked, *i. e.*, whether the grant of authority to the Committee to ask those questions violates the Constitution. Petitioner's attempt to have this Court decide questions, not presented by this record, relating to other aspects of the Resolution, other witnesses, other questions,

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[20] Moreover, the testimony at the trial showed this pertinence (R. 157–158). Cf. *Bowers* v. *United States*, 202 F. 2d 447 (C. A. D. C.)

and other proceedings is misconceived. This is not an appropriate case for deciding generally the validity of all aspects of the resolution authorizing investigation by the House Committee on Un-American Activities or for passing upon everything the Committee may have done in the past. See *United States* v. *Rumely,* 345 U. S. 41; *Barsky* v. *United States,* 167 F. 2d 241, 248, certiorari denied, 334 U. S. 843.

This Court has repeatedly said that it will not pass on issues of legislative validity until they come before it inescapably, in concrete form, with the factual background and record appropriate for decision of the concrete question; this Court neither renders advisory opinions on hypothetical cases nor declares general constitutional doctrines unrelated to the particular case.[21] Thus, in *United Public Workers* v. *Mitchell,* 330 U. S. 75, where the Court refused to entertain a complaint, at the instance of persons who had not violated the Act, that the Hatch Act violated rights under the First Amendment and was un-

[21] See *Federation of Labor* v. *McAdory,* 325 U. S. 450, 461–2; *United Public Workers of America* v. *Mitchell,* 330 U. S. 75; *Rescue Army* v. *Municipal Court,* 331 U. S. 549, 568 ff. and earlier cases there collected; *United States* v. *Petrillo,* 332 U. S. 1, 5; *Toomer* v. *Witsell,* 334 U. S. 385, 394; *Parker* v. *Los Angeles County,* 338 U. S. 327, 333; *District of Columbia* v. *Little,* 339 U. S. 1, 3–4; *Sweatt* v. *Painter,* 339 U. S. 629, 631; *Touhy* v. *Ragen,* 340 U. S. 462, 469; *United States* v. *Hayman,* 342 U. S. 205, 223; *United States* v. *Rumely,* 345 U. S. 41, 48.

constitutionally vague under the Fifth Amendment, the Court stated (330 U. S. 89–90):

> The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication. It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interference upon the other.

By this standard. it is plain that the broad issues tendered by petitioner here should not be decided in this case. The challenged Resolution was quite clear enough for petitioner to understand that he was under a duty to testify as to the questions put to him. For this Court, in these circumstances, to undertake to decide whether, without respect to its clearly operable area, the Resolution is too vague in other situations would be to decide a hypothetical case not now before the Court.

Moreover, in applying essentially the same principle but with somewhat different emphasis, the Court has insisted that a complainant has standing to challenge the validity of legislative acts only as those acts affect him directly. He cannot insist on the rights of others, whether their cases be actual or hypothetical. *United States* v. *Wurzbach*, 280 U. S. 396, 399; *Robinson* v. *United States*, 324 U. S. 282, 286; *Kuehner* v. *Irving Trust Co.*, 299 U. S. 445, 455. For instance, in Chief Justice Vinson's opinion in *Dennis* v. *United States*, 341 U. S. 494, 515–516, it was pointed out that the defendants, convicted for conspiracy to teach and advocate the violent overthrow of the Government, could not complain of possible difficulties in the application of the statute to other persons and in other circumstances. So here, we do not believe that petitioner, to whom the Committee Resolution is clearly applicable, should be permitted to attack all possible applications of the Resolution. The fact that there may have been broader applications of this Committee's investigatory power in the past, or that there may be in the future, does not change the principle, and allow petitioner to raise objections which might have arisen had he been asked different questions.

That these standards of judicial restraint are applicable to Congressional resolutions of the kind here involved was clearly settled by this

Court's opinion in *United States* v. *Rumely*, 345 U. S. 41, where this Court said (345 U. S. at 456):

> Patently, the Court's duty to avoid a constitutional issue, if possible, applies not merely to legislation technically speaking but also to congressional action by way of resolution. See *Federal Trade Comm'n* v. *American Tobacco Co.*, 264 U. S. 298. Indeed, this duty of not needlessly projecting delicate issues for judicial pronouncement is even more applicable to resolutions than to formal legislation. It can hardly be gainsaid that resolutions secure passage more casually and less responsibility, in the main, than do enactments requiring presidential approval.

To go beyond the boundaries of this case to consider, unnecessarily, possibly difficult constitutional questions of the validity of an authorization of the Congress, on behalf of a witness not really hurt by alleged improprieties in the resolution or of the committee, would itself, we respectfully submit, be in direct conflict with the governing principles of constitutional adjudication established and consistently adhered to by this Court. The only constitutional question here presented is whether the Resolution, interpreted so as to authorize the inquiry and questions, violates the Constitution.

Another way of reaching this result is via the doctrine of separability. For any possibly invalid application of the Resolution can be sepa-

rated from those which are valid, without invalidating the Constitutional scope of inquiry. A statute may, of course, be invalid as applied to one set of facts and valid as applied to another. *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Wynne,* 224 U. S. 354; *Kansas City Southern Ry. Co.* v. *Anderson,* 233 U. S. 325; *Poindexter* v. *Greenhow,* 114 U. S. 270, 295; *Federation of Labor* v. *McAdory,* 325 U. S. 450, 462. There would seem to be no reason why the same is not true with respect to a resolution. For the principle of separability, which permits the valid part of a legislative act to be saved where it appears that the enacting body would have authorized the valid matter even if the invalid were eliminated, is not dependent on any difference between a statute and a resolution.

2. *The Committee had the power, under the Constitution, to ask the questions here involved, and, in so doing, did not violate either the First or Fifth Amendment*

(a) We submit that under our view of the Resolution no serious constitutional question as to its validity is presented. The power of the Committee to inform itself, in order the more intelligently to recommend legislation or to approve legislation which has been referred to it, appears to us to be beyond constitutional attack. It is an essential function of Congress to inform itself upon all matters of national concern.

McGrain v. *Daugherty,* 273 U. S. 135, 171–175; *United States* v. *Norris,* 300 U. S. 564, 573. The cases establish, and it cannot be denied, that a Congressional committee may seek facts by compulsion, when necessary, in aid of the power of Congress to legislate. This means that Congress may seek to elicit all the facts bearing on a subject within its constitutional authority. It is not limited to inquiring into those facts which show the need for legislation or into those matters which it has power to prohibit. The power to investigate is necessarily broader than the substantive power which may be exerted by the investigator. *Oklahoma Press Publishing Co.* v. *Walling,* 327 U. S. 186; *Endicott Johnson Corp.* v. *Perkins,* 317 U. S. 501. It is equally important for Congress to be informed as to facts which would show legislation to be undesirable and unnecessary. Congress obviously cannot tell whether there is need or Constitutional basis for regulating the statements of which, for example, "propaganda" may consist until it learns what those statements are, and what the object and effects of such "propaganda" may be.

Here, where the Committee was seeking information in relation to propaganda and propaganda activities, which at the least encompassed the advocacy of the overthrow of the Government by force and violence, we submit that there can be no dispute as to the authority of Congress or

the Committee to elicit testimony in connection with that inquiry, both voluntarily and compulsorily.

(b) In this view, there can be no contention that this power of Congress and the Committee encroaches upon First or Fifth Amendment rights.

(i) As we have shown (*supra,* pp. 54–61), the Resolution must be interpreted so as, at the very least, to embrace the Communist activity which was the subject of the inquiry. Indeed, petitioner's contention is not that the resolution cannot be construed to cover what was undertaken by the Committee. It is, rather, that the ultimate extent of the Resolution is so undefinable that no one ought to be obliged to respond to an investigation conducted pursuant to its terms, however obvious it may be that the Resolution covers the inquiry to which the complaining individual has been called.

Although we disagree with this view (see *infra,* pp. 77–95), we think it well to repeat here that petitioner has no standing to challenge the definiteness of the Resolution as to other persons differently situated, so long as it clearly applies to him. See *supra,* pp. 66–71; and see *Williams* v. *United States,* 341 U. S. 97, 101–102; *Jordan* v. *DeGeorge,* 341 U. S. 223, 231–2; *United States* v. *Petrillo,* 332 U. S. 1, 7. As to him, we think it clear that there is no Constitutional infirmity of vagueness.

To put it another way: In our view, the natural and spontaneous meaning of the Resolution is that it authorizes the Committee to investigate at least into "Communist propaganda" and "Communist propaganda activities." So read, as we have shown (*supra,* pp. 51–61), it clearly authorized the inquiry under consideration. So read, the questions petitioner refused to answer clearly were pertinent to the inquiry. So read, there can be no questions of vagueness.

(ii) Nor, in this view, can there arise any question of deprivation of the rights guaranteed by the First Amendment, although petitioner urges that he could not be compelled to answer the questions put to him in this case because they call for the disclosure of political affiliations and associations which, he says, is barred by the First Amendment.

Petitioner is a national officer in a union which has voluntarily assumed certain quasi-public responsibilities in connection with labor-management relations. See *American Communications Association* v. *Douds,* 339 U. S. 382, 401–402. Information relative to the organization, structure, activities and membership of such a union does not pertain merely to private "political associations." Whether there may be private aspects to petitioner's relationships with the persons named, and whether there may be some political associations as to which there can be silence, the fact remains that petitioner here

has voluntarily assumed a public responsibility in connection with other UE officials the details of which he cannot refuse to disclose. Whatever is meant by "political associations and affiliations," it cannot reasonably include associations directly related to the union relationships involved in this case.[22] Congress may inquire into possible membership in the Communist Party of leaders of a union who are thought to have access to significant defense information. Even more clearly, Congress may inquire to discover the techniques which may be used to make the whole membership of a union subservient to the aims and policies of the Communist Party.

But, even if this view is not accepted, petitioner's argument is still without merit. This Court has held that, consistently with the First Amendment, Congress may constitutionally require leaders of labor unions, which invoke the benefits of the Labor Management Relations Act, to disclaim under oath their membership in the Communist Party. *American Communications Association* v. *Douds,* 339 U. S. 382; *Osman* v.

[22] Because 58 of the 68 counts against petitioner depend on his refusal to answer questions related to his knowledge of certain persons who were apparently UE officials, and to his knowledge whether those persons were in fact UE officials, and because petitioner's conviction can stand if only one of the 68 count in indictment is sufficient, the answer to this argument will be confined principally to those questions.

Douds, 339 U. S. 846. This is clearly recognition that the Communist Party cannot fairly be treated as an ordinary political party, nor associations in it as ordinary associations. The evidence that it is used for purposes, and with techniques, creating dangers to the national security is too impressive to ignore. Cf. *Dennis* v. *United States,* 341 U. S. 494. See also, *e. g., Adler* v. *Board of Education of the City of New York,* 342 U. S. 485; *Harisiades* v. *Shaughnessy,* 342 U. S. 580. These nonpolitical attributes of the Party are what justify not treating it as a mere political association. It follows, again, that whatever the propriety of inquiry into political associations, that is not a relevant issue here.

The fact is that Congress has legislated with regard to Communists and Communist propaganda with frequency in recent years. In petitioner's view, that legislation would have had to be enacted without the aid of a preliminary investigation or inquiry into the nature, techniques, and aims of Communist propaganda. Since such legislation has been upheld as not in violation of the First Amendment, *a fortiori,* a Resolution authorizing a committee of Congress to investigate into the desirability of further legislation is valid.

For the power to investigate must necessarily include power to inquire into what can and cannot be regulated, so as to draw a line in legis-

lating, and must therefore be broader in scope than the legislative power itself.[23]

C. THE RESOLUTION, ON ITS FACE, IS CONSTITUTIONAL

We have shown, that whatever else the Resolution might encompass, it clearly covered the inquiry with which this case is concerned and that the questions which petitioner refused to answer are plainly within the scope of that inquiry. Petitioner, however, contends that the Resolution is so vague on its face as to be unconstitutional, and that the Resolution, broadly read, violates the First Amendment. Although for the reasons we have discussed (pp. 66–71), we do not believe that these contentions need be faced on this record, we shall present the reasons for our view that these contentions are without merit.

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[23] *United States* v. *Rumely*, 345 U. S. 41, is not inconsistent with this view. In the first place, this Court expressly abstained from deciding to what extent the First Amendment prohibited Congressional investigation into lobbying activity. In the second place, as the Court pointed out (345 U. S. at 45): It was "* * * giving the scope to the resolution for which the Government contends, that is, deriving from it the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process," which raised doubts of constitutionality in view of the prohibition of the First Amendment. Here, however, the scope of the Resolution with which we are here concerned at this point is limited to Communist propaganda and Communist activity, clearly legitimate objects of legislative concern.

1. *The Resolution, on its face, satisfies whatever standards of definiteness may be applicable to Resolutions establishing congressional committees*

(a) *Standards of definiteness are inapplicable to Resolutions establishing congressional committees.*—In order to determine whether the committee resolution is unconstitutionally vague, it is necessary, first, to consider the criteria which govern Congress in establishing committees with investigatory powers.

We start with the proposition that no provision of the Constitution—and nothing in its basic structure—limits the powers of inquiry which Congress may bestow on any committee, so long as it does not go beyond the sphere over which Congress itself has authority. There is no doctrine of separation of powers as between Congress and its committees. In the beginning, the Senate had only 26 members, less than some present committees,[24] and only slightly more than the 21 members on the present Senate Committee on Appropriations. 60 Stat. 815. Indeed, R. S. 102 still refers to matters "under inquiry before either House * * * or any committee of either House."

An inquiry by a House of Congress could be conducted without any underlying statute or res-

[24] Most House committees have 25 or 27 members. The Committee on Appropriations consists of 43 members. 60 Stat. 822.

olution defining its scope. The inquiry would necessarily be limited to subjects which Congress had constitutional authority to investigate. It would be necessary to show that a particular question pertained to such a subject, but the absence of a resolution describing the subject to be investigated would not render the whole proceeding void.

The committees sit as arms of Congress, not as subordinate agencies. And the necessities of their relationships to Congress require that the subjects over which they have jurisdiction be broadly defined, for it is not the purpose or function of the resolutions defining their jurisdiction to set standards of conduct. It is the purpose and function of such resolutions to permit recommendations with respect to what standards of conduct should be enacted. It is the purpose of such resolutions, particularly when they run to standing committees, to create a ready intelligence to evaluate and recommend in a general area of legislative activity. The precise nature of all the questions that will fall into this area obviously cannot be known in advance of drafting the resolution (as may perhaps be the case with limited special inquiries, cf. *United States* v. *Rumely*, 345 U. S. 41).

The history of the Legislative Reorganization Act emphasizes this. It shows that a major purpose of the Act was to put an end to over-

lapping committees, so that it could be told, without conflict, to precisely what committees particular legislative matters should be assigned, and so that individual congressmen could concentrate their attention on a smaller number of committees.

This suggests that the framing of committee resolutions was regarded as a largely administrative matter, having no regard to problems of specificity; and, indeed, suggests that the problem, as Congress saw it, was not that earlier committee assignments were too general, but, rather that they were too specific to permit flexible administration.

Each regular standing committee—at least in the Senate (Legislative Reorganization Act, 1946, Sec. 134, 60 Stat. 831–832)—may make "investigations into any matter within its jurisdiction."[25] The Committees on Interstate and Foreign Commerce, for example, have jurisdiction over "interstate and foreign commerce generally," *inter alia* (*id.*, at 817, 826); the Committees on the Armed Services over "common defense generally," *inter*

[25] Investigations are authorized in the House by special resolution. But these resolutions frequently authorize the standing committees merely "to conduct thorough studies and investigations relating to matters coming within the jurisdiction of such committee." See, for example, House Resolution 141, 80th Cong., 1st Sess., printed at 93 Cong. Rec. 5057, which uses the above language in authorizing the Committee on Armed Services to conduct an investigation; House Resolution 93, printed in 93 Cong. Rec. 5058.

alia (*id.*, at 815, 824); and the Committees on Appropriations simply over "appropriation of the revenue for the support of the Government" (*ibid.*)—which might permit inquiry into every subject for which Congress does or could be asked to appropriate money. These definitions of the powers of Congressional committees are far broader than the standards of definiteness required in criminal statutes. They are far broader than the standards applicable when the Congress is delegating authority to the Executive Departments or agencies. No administrative body could be empowered merely to regulate "interstate or foreign commerce generally." Cf. *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495. And yet no one has ever suggested that these committees are unconstitutional, or that they lack power to investigate, because of the sweep of their authority. It is, indeed, clear why there has never been any such suggestion. To judge committee resolutions by normal standards of definiteness would invalidate every general assignment of committee jurisdiction and hobble almost beyond repair the administration of Congress. In short, criteria of definiteness do not apply to Congressional Resolutions of the kind here involved.

(b) *No problem of definiteness is presented so long as the subject of the actual inquiry has been disclosed.*—The only basis for suggesting, in the face of all these considerations, that the rule as to

definiteness of criminal statutes becomes applicable in a prosecution for refusing to testify before a committee, is the assumption that R. S. 102 and the statute or resolution embodying the Committee's authority must be read together as an integrated criminal law, and that if the authorizing resolution so read does not satisfy criminal law standards of definiteness it must be deemed unconstitutional insofar as compelling testimony from witnesses is concerned. But acceptance of this argument would impose upon the power of Congress to create committees requirements as to specificity entirely inconsistent with practice and history, and without any constitutional basis. For the long-exercised power to establish committees with general investigating authority would be futile if such committees could not prosecute witnesses who refuse to testify.

Nor is any such limitation essential to protect witnesses against essential unfairness or infringement of their right not to be questioned about matters outside the constitutional authority of Congress. We turn to the criminal statute, 2 U. S. C. 192, to see whether it gives a witness or prospective witness an "ascertainable standard of guilt" (*Winters* v. *New York*, 333 U. S. 507, 515), without regard for the generality of the statute or resolution by which a committee is created.

There is no problem with respect to the first portion of 2 U. S. C. 192, which provides that "Every person who, having been summoned as a witness

by the authority of either House of Congress to give testimony or to produce papers upon any matters under inquiry before either House * * * or any committee of either House of Congress, willfully makes default" shall be guilty of a misdemeanor. The ingredients of the crime are that the witnesses must be summoned to give testimony, that it be on a matter under inquiry, and that he "willfully makes default." There is nothing indefinite about any of these factors insofar as the witness is concerned. The statute does not leave it to the witness to determine the nature of the matter under inquiry; he need only know that the summons is to testify on a matter which is under inquiry. And this is a reasonable means of exercising the power of Congress to investigate. The defaulting witness is not thereby deprived of his right to defend against prosecution on the ground that the whole proceeding is unconstitutional, but that does not go to the definiteness of the statutory obligation.

Nor is the second clause of 2 U. S. C. 192—which is involved in the present case—which punishes refusal "to answer any question pertinent to the question under inquiry," made unconstitutionally indefinite by the generality of the statute or resolution creating the investigating committee. If we assume that the witness must have a basis for judging the pertinence of the "question under inquiry" in order to determine whether he must answer, it does not follow that such information

is obtainable only from the resolution creating the committee. A witness might not be aided by reference to "the common defense generally" or to "interstate and foreign commerce generally." The precise question under inquiry in an investigation or in a portion of it would normally be obvious at the time of the question. A witness who honestly had doubts could ask the committee before deciding whether to answer a particular question.

The inquiry here was in fact pin-pointed to the consideration of the advisability of two legislative proposals, one in the form of a bill referred to the Committee by the House, and the other developed by virtue of the Committee's own earlier investigations. See pp. 51–54, *supra*. Although it is not clear that the witness was specifically informed on this point, it was a matter of public record, and he seems to have raised no question at the time as to the purpose of the hearing.[26] In any event, it would seem that the test of what was under inquiry was what was in fact under inquiry, not what petitioner might have thought was under inquiry.

So far as we have been able to discover, there is no case authority which would require that the

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[26] The fact that the Chairman stated that the "purpose of this Committee is to expose communism * * *" does not establish that the petitioner was misled as to the purpose of the hearing. Cf. *infra*, pp. 103–111.

resolution be read as an integral part of 2 U. S. C. 192 as definitive of the offense. However, there is one group of cases which would seem to be analogous. Convictions have been sustained for violations of administrative regulations, where the regulations have been promulgated under some very general standard. See, *e. g., Boyce Motor Lines* v. *United States,* 342 U. S. 337. In such cases, obviously, the general standard is not required to meet criminal statute standards of specificity. The test is whether the regulation, in a general way, embodies the principle authorized by the basic statute, and whether the regulation is itself definite enough.

The policy embodied in these holdings is basically the same policy embodied in dealing with Congressional regulations. An area of conduct, for purely practical reasons, cannot be defined precisely in advance. *Ad hoc* administration by Congress, on the other hand, would create chaos. Congress cannot pass a law for every industry subject to a general kind of regulation, if it is to have time to do anything else. Equally, Congress cannot pass a resolution for the investigation of every problem that comes before it. If the specificity of the particular regulation having impact on the complainant suffices in the administrative regulation field, it ought also to suffice, *a fortiori,* in the area of investigative resolutions.

In this view there is, of course, no problem of vagueness of the Resolution, for the subject matter of this particular inquiry was quite clear and specific, and the particular questions asked were obviously pertinent to that inquiry.

(c) *In any event, the Resolution here is sufficiently definite.*—Petitioner's principal contention as to the alleged ambiguity of the Resolution relates to the words, "un-American," "subversive," and "propaganda" and "propaganda activities." Assuming, *arguendo* (but cf. *supra,* pp. 66–71), that petitioner can challenge the Resolution in this manner, we think it clear that each of these terms may fairly be given an operable definition, and that the Resolution, as a whole, is sufficiently definite.

(i) *"Un-American"*: Clause (i) of the Resolution gives the Committee the authority to investigate "the extent, character, and objects of un-American propaganda activities in the United States," and clause (ii) of the Resolution gives the Committee authority to investigate "the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries * * * and attacks the principle of the form of government as guaranteed by our Constitution * * *." This language of the second clause at least makes clear one meaning of "un-American." For it shows, on the very face of the Resolution, that "un-American," as used in the first clause, includes "subversive" as that term is, in turn, limited in the second clause.

Although it can be urged that the use of "subversive and un-American" conjunctively in the second clause means that they are mutually exclusive, the more correct inference is that the words were conjoined for emphasis. A definition of "un-American" which did not include "subversive * * *" would, to say the least, be completely unrealistic (see pp. 87-91, *infra,* dealing with the definition of "subversive"). But even more convincing than this is the failure of the Resolution to include "subversive * * *" in the first clause, although it was spelled out in the second. It is unthinkable that Congress would have intended to investigate un-American propaganda activities, and *exclude* those activities carried on by subversives "instigated from foreign countries" and attacking "the principle of the form of government as guaranteed by our Constitution." The only conclusion that can be reached is that no such exclusion was intended, but that "un-American" was intended to be comprehensive of "subversive", as thus defined.[27]

(ii) *"Subversive propaganda":* Although the important word in the Resolution, from the point of view of clarity, is "subversive", it modifies

[27] Petitioner himself agrees with this view. At page 34 of his brief, he states that "The second clause of the resolution in no way expands its basic subject matter. It merely particularizes the generality of the first clause both with respect to the kinds of propaganda to be investigated * * * and the sources of such propaganda * * *."

"propaganda", which is therefore discussed first. This is, in an era of extensive propaganda warfare, surely a term of knowable content. It is not an indefinite concept incapable of practical application.[28]

But it is not all propaganda that is subject to investigation. It must be "subversive" propaganda. In the context of this Resolution, it is submitted that the word "subversive" plainly connotes propaganda that encourages illegal methods of undermining the principle of the republican form of government: espionage, sabotage, and the attempt to cause change in the form of our government without following normal constitutional processes.

In short, subversion refers, as simply and directly as any word could, to complete overthrow.[29]

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[28] Webster's *New International Dictionary* (Merriam-Webster 2d ed. 1950, p. 1983) defines it as follows:

> 2a. * * * Any organized or concerted group, effort, or movement to spread a particular doctrine or system of doctrines or principles; as, the need of a more active social *propaganda*. b. Now, often, dissemination of ideas, information, gossip, or the like, for the purpose of helping or injuring a person, an institution, a cause, etc.; as, the victim of the opposing party's *propaganda;* belligerent *propaganda* among neutrals.
>
> * * * *
>
> 3 * * * (b) A scheme or plan for the propagation of a doctrine or system of principles; as, the cleverly worked-out *propaganda* of the enemy.

[29] The dictionary leaves no doubt of the narrow scope of the word. It refers to "subvert" which, in turn is defined

It refers, as we have said, to a change of government without benefit of orderly process.

Congress itself, less than a year after petitioner's testimony, labelled a subchapter of the Internal Security Act of 1950 as "Subversive Activities Control"; and included in that subchapter activities (1) which related, directly or indirectly, to advocacy of the use of force to challenge the Government, or (2) which involved espionage and related activities. 18 U. S. C. (Supp. V), Ch. 115, Subchapter I, 2385–2390. There was nothing new in this classification. The codifiers of the United States Code have consistently used "subversive" as a compendious description of those laws similar to those dealt with under the "Control of Subversive Activities", or those which dealt with certain inter-

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as follows (Webster's New International Dictionary (Merriam-Webster 2d ed., 1950)):

> [* * * fr. *sub.* under + *vertere* to turn * * *] *Transitive:*
>
> 1. To overturn from the foundation; to overthrow; to ruin utterly; to destroy; also, to upset, uproot, or the like.
>
> * * * * *
>
> 2. To pervert, or corrupt (one) by undermining his morals, allegiance, or faith; to alienate; as, propaganda that *subverts* foreign-born citizens.
>
> 3. To destroy completely the existence, potency, soundness, etc., of; to render futile, void, inoperative, or the like; as, to *subvert* another's arguments, the principles of religion, the constitution, or the government.
>
> —*Intransitive:* To overthrow anything completely; to destroy. Syn.—See overturn.

ferences with the military establishment (*e. g.*, encouragement of insubordination or mutiny by military personnel). See 18 U. S. C. (1946 ed.) 9, 10, 11, 13, 14; 50 U. S. C. (Supp. V), Ch. 23, Subchapter I, 781–798; 8 U. S. C. (Supp. V), 137; 50 U. S. C. App. (Supp. V), 2263. While it is explicitly provided that inferences of legislative construction are not to be drawn from the placement of laws in the Code nor by reason of catchlines (Sec. 19 of the Act of June 25, 1948, 62 Stat. 683, 862), it is nonetheless true, and significant, that the codifier's use of "subversive" is consistent with the reasonable understanding which Congress' 1950 Act indicates; and that both are indicative that "subversive" is a concept of definite meaning. Cf. *Dennis* v. *United States,* 341 U. S. 494, 505; *Adler* v. *Board of Education,* 342 U. S. 485.

This meaning of "subversive", moreover, is emphasized by the Resolution itself which attaches the further condition that the subversive propaganda, to be subject to investigation, must also attack "the principle of the form of government as guaranteed by our Constitution." It is difficult to believe that anyone would read this as meaning anything other than the republican form of government which, too, has specific content.[30]

[30] The phrase is narrower than "the principles of the Constitution" discussed in *Schneiderman* v. *United States,* 320

"[T]he distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves." *In re Duncan,* 139 U. S. 449, 461. Thus, there must be, at least, an attempt, or a scheme or plan, to spread a system of ideas that rejects representative government; and even such a plan is not covered unless the propaganda is "subversive".

(iii) *"Propaganda activities":* As we have indicated above (pp. 57–61), "propaganda activities" as used in Clause (i) of the Resolution must refer to the mechanisms and devices of subversive propagandists which are integrally related to their propaganda. Clause (ii), however, refers,

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U. S. 118. The majority in the *Schneiderman* case did not find it necessary to define these principles, but accepted the Government's definition for purposes of the decision (320 U. S. at 140). The dissent of Chief Justice Stone defined the principles as follows: "* * * among them are at least the principle of constitutional protection of civil rights and of life, liberty and property, the principle of representative government, and the principle that constitutional laws are not to be broken down by planned disobedience. I assume also that all the principles of the Constitution are hostile to dictatorship and minority rule; and that it is a principle of our Constitution that change in the organization of our government is to be effected by the orderly procedures ordained by the Constitution and not by force or fraud." (320 U. S. at 181.)

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not to "propaganda activities," but merely to "propaganda". It seems clear, however, in spite of that fact, that this investigation would be comprehended by clause (ii) alone. For authorization to investigate the "diffusion" of subversive propaganda is, on its face, an authorization to determine how much the propaganda is spread, the channels through which it is spread, the techniques for making its spread effective, and the purposes for which it is spread.[31]

The remaining portions of the Resolution, moreover, emphasize that this is the purport of the word "diffusion." The first clause of the Resolution authorizes investigation into the "extent, character, and objects" of un-American propaganda activities, which shows, as we have already urged, that the investigation of those activities was to be complete. The third clause charges the committee to investigate all other questions, in relation to the investigations authorized in the first two, "that would aid Congress in any necessary remedial legislation." Again, this is a charge to make the investigation

[31] This is made clear, again, simply by turning to the definition of "diffusion", which refers to "spreading", "extension", "dispersion" and as synonym, to "propagation." Webster's *New International Dictionary* (Merriam-Webster 2d ed., 1950, p. 728). The substance of these explanations of the word shows precisely what Congress wanted to investigate: the extent, processes, and purposes by which described propaganda becomes a force in American public life and which must be reckoned with by legislation.

complete. The word "diffusion" is broad enough to authorize, similarly, an investigation of all relevant aspects of the described propaganda, and in this context, the inference is that it should have that meaning.

The difference between referring, on the one hand, to the "extent, character, and objects" in relation to propaganda activities, in clause (i) of the resolution, and referring, on the other hand, to "diffusion" in relation to "propaganda," in clause (ii), is obviously a reflection of the grammatical fact that "activities" do not "diffuse", whereas ideas and "propaganda" do. The difference certainly does not permit an inference that the investigation with respect to "subversive propaganda" was to be narrow.

Nor does the fact that the "diffusion" of "propaganda" is subject to investigation only when it is "subversive and un-American" whereas "propaganda activities" may be investigated if they are merely "un-American", have any tendency to show that the effects of propaganda cannot be fully studied. The difference in standard shows only that Congress was being very careful to avoid calling before it groups whose activities were merely propagandist, unless the propaganda was of a seriously disruptive nature. This has nothing to do with what sort of investigation is permissible once the group falls within the described class.

(iv) *The meaning of the clauses generally:* These considerations bearing on the meaning of the word "diffusion" serve also to emphasize generally that attention should be paid to the function the Resolution was designed to serve. Congress obviously cannot know in advance of investigation the various techniques by which subversive propagandists make their work effective. It cannot know how the subversive propaganda activities are tied to other subversive activities, although it obviously has reason to suspect that there is considerable interlacing. It framed a Resolution to permit the discovery of facts in this field. There is no reason why interpretation of the Resolution to that committee should be premised on a prescience that is absent.

This point may be emphasized further by pointing out that, although the words of the Resolution have been treated separately, this was not necessary. It is clear that the Resolution as a whole includes as one of its essential, fundamental, and separable charges, that the Committee should investigate the propaganda and propaganda activities of foreign instigated subversive groups, and the related ways in which such propaganda and activities have impact on matters as to which legislation would be possible and useful. The difficulty with petitioner's argument that the Resolution does not cover the investigation undertaken here is that it ignores the facts which the

Committee's work, if nothing else, had made clear: that the whole network of Communist activity centers around propaganda and propaganda activities. Communist infiltration of defense plants is an aspect and object of propaganda activities in those plants. The Committee thought this and, as we have pointed out, Congress endorsed that view. Congress never appears to have thought that the Committee was construing "diffusion", or "extent, character, and objects" or "propaganda activities" too broadly. The criticism of the Committee has been directed at the words "un-American" and "subversive". Nobody has ever doubted that, if the propaganda were adequately described, it should be possible to investigate it fully. This does not mean, of course, that guidance to the witness is in fact absent. For purposes of this case, the heart of the authorization is still only subversive propaganda instigated from a foreign country. That, as we have shown, is clear enough. But the Resolution also assures that the techniques of diffusion of subversive propaganda will be fully subject to investigation, rather than partially limited by arbitrary notions separating the propaganda technique from the propaganda.

2. *The Resolution, on its face, does not violate the First Amendment*

(a) Petitioner urges that the allegedly broad language of the Resolution and the action of

the Committee thereunder violates his Constitutional right of freedom of speech and of free political association. We have already shown (*supra*, pp. 73–77) that, in so far as the Resolution applies to Communist activity, it is clearly constitutional. We have further shown (*supra*, pp. 86–95) that, as the Resolution is reasonably to be interpreted, it is designed to authorize an investigation into the same kinds of evils which Communist propaganda and propaganda activities engender and represent. In our view, "subversive" and "un-American" "propaganda" and "propaganda activity" are clearly of the same order as Communist activity. Accordingly, it would seem clear that the Resolution, on its face, does not violate the First Amendment.

(b) The fact that the Resolution may authorize an investigation into both illegal advocacy and also into speech which Congress may not constitutionally proscribe, does not render it unconstitutional, for surely Congress may authorize one of its committees to investigate as to where it should and may attempt to draw the line between the legal and the illegal.

There is a well recognized field for legislation with respect to propaganda activities, notwithstanding the existence of constitutional limitations. From the information which the Committee receives, it conceivably could conclude that certain propaganda activities have reached

the stage where they present a "clear and present" danger of bringing about a substantive evil, such as the overthrow of our form of government by means inconsistent with the Constitution, and that remedial legislation is necessary. Cf. *Dennis* v. *United States,* 341 U. S. 494; *Dunne* v. *United States,* 138 F. 2d 137 (C. A. 8), certiorari denied, 320 U. S. 790. The Committee may learn that foreign governments are carrying on propaganda warfare in our midst with a view to undermining our constitutional principles through aliens who enter our shores. Such information could result, and has resulted, in the amendment of our immigration laws to close even more tightly our boundaries to classes of persons believed to be engaged in such activities. The data disclosed by the investigation might show, and have shown, the necessity for increasing our internal security forces, and legislation and appropriations for this purpose could be initiated. Or the inquiry might disclose, negatively, that appropriations for the investigation of activities of foreign governments should not be decreased—or that they could be.

Illustrative of legislation which might be based upon the information adduced under the Resolution are the Internal Security Act of 1950, the Immigration and Nationality Act of 1950, the statutes regulating correspondence with foreign governments (cf. 35 Stat. 1088, as amended, 47

Stat. 132, 18 U. S. C. (Supp. V) 953), imposing safeguards against seditious conspiracy (cf. 35 Stat. 1089, 18 U. S. C. (Supp. V) 2384), prohibiting measures undermining the morale of the armed forces (54 Stat. 670, 18 U. S. C. (Supp. V) 2387), authorizing government radio broadcasts to foreign countries (Act of January 27, 1948, 62 Stat. 6), prescribing qualifications for government employment, requiring the registration of foreign agents (cf. 53 Stat. 1244, 22 U. S. C. 601, 611), and organizations carrying on certain types of propaganda (cf. 54 Stat. 1201, 18 U. S. C. (Supp. V) 2386).

As the Court of Appeals for the Second Circuit stated in the *Josephson* case, 165 F. 2d at 90:

> Information gained by a committee of this nature, provided its search for the truth may not be frustrated by such obstructive tactics as those employed by the appellant, might well aid Congress in performing its legislative duties, viz., in deciding that the public welfare required the passage of new statutes or changes in existing ones or that it did not. Cf. Landis [*Congressional Power of Investigation,* 40 Harv. L. Rev. 153 (1926)], at pages 208–10. Some of these duties are imposed not only by the principle that the Government shall preserve itself, but, of course, by express provisions in the Constitution. Thus among the purposes of the Constitution, as expressed in the Preamble, are to "insure domestic Tranquility," to "provide for the

> common defense," to "promote the general welfare," and to "secure the Blessings of Liberty." Art. 1, sec. 8 gives Congress the power to "provide for the common Defense," "to raise and support Armies," "to provide and maintain a Navy," "to make Rules for the Government and Regulation of the land and naval Forces," and to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers." Art. IV, Sec. 4 provides that "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion" and on application "against domestic Violence."

The power to conduct an investigation with a view to possible legislation cannot be measured by the scarcity or the abundance of legislative recommendations emanating from the Committee or induced by its efforts.[32] Some of the effects may have been negative in character. Congress may be dissuaded from changing other laws or appropriations, or persuaded that for practical or constitutional reasons no legislation on a subject should be enacted.

The only matter of consequence, however, is whether the subject of the investigation is such that the legislative processes might be aided by

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[32] The Committee's legislative recommendations since 1939 are compiled in its 1952 Annual Report. H. Rept. No. 2516, 82d Cong., 2d Sess., pp. 81–88.

the facts disclosed. The facts amply demonstrate that the Resolution pursuant to which the Committee on Un-American Activities operate was designed to give such aid. The Resolution on its face declares that the investigation is to be such as will "aid Congress in any necessary remedial legislation."

(c) Even if the indirect effects of the Committee inquiry, which petitioners argue result from such inquiry, do obtain, nevertheless there is no violation of the First Amendment. First Amendment rights are not absolute. They have never been thought to preclude the compulsory giving of testimony. The power to compel testimony for public purposes—legislative as well as judicial—is essential to the existence and operation of organized society. Not infrequently, compelled disclosures may bring persons into disfavor or disrepute, may result in loss of employment or other manifestations of individual or popular ill-will. And there is, of course, even the more drastic penalty of imprisonment for refusal to testify.

But the need for accurate first-hand information as a basis for governmental action outweighs the interference with personal rights resulting from compelled disclosures. This is so even if the rights are thought to be within the field reached by the First Amendment. For those rights must be balanced against other legitimate and essential needs of the community.

The restraint imposed, by *ad hoc* disclosures of the sort sought here, on petitioner's rights freely to align himself with American political dissent, or worse, is quite moderate and indirect. He is prohibited from nothing. He is subjected to no criminal penalty. He is asked to disclose no belief. He is asked merely to help the Committee, for the benefit of Congress, to determine the organizational structure of UE and its relation to possible Communist infiltration in defense plants in which UE has contracts. The interest of the United States in protecting itself not from ideology, but from possible espionage or sabotage, and from the danger that workers in its most sensitive industries will be insensibly made the tools of a foreign power, is large and urgent. It is plainly as strong as, if not stronger than, that sustained the *Douds* cases.[33]

(d) Inherent in petitioner's argument is the contention that the "right to silence", is protected by the First Amendment. Even if it is accepted that disclosures before the Committee result in unfavorable publicity and discourage persons from subjecting themselves to the risk of

[33] Certainly, the interest involved in this case is as important as those on behalf of which other peripheral restraints on freedom of speech have been sustained. Compare *Beauharnais* v. *Illinois*, 343 U. S. 250; *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288; *United Public Workers* v. *Mitchell*, 330 U. S. 75; and *National Labor Relations Board* v. *Virginia Elec. & Power Co.*, 314 U. S. 469.

similar unfavorable reaction to the expression of their views, it does not follow that the First Amendment is in any way violated. For the sanction growing out of such disclosure is not a legal one, but, at most, the sanction of public opinion, against which the First Amendment does not guarantee.[34]

It was not this sort of indirect consequence of public disclosure with which the First Amendment was concerned. Such indirect consequences may result from any public investigation. The

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[34] See, generally, on this subject Nutting, *Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs* (1948) 47 Mich. L. Rev. 181, 213–222. See also The Report on Congressional Investigations (dated November 22, 1948) of the Committee on the Bill of Rights of the Association of the Bar of the City of New York, which states (pp. 3–4):

> There seems to be prevalent a belief, although somewhat vague, that the individual American is endowed with some sort of a "right of privacy" which exempts him from inquiry into his private affairs. One hears it suggested that such an inquiry violates some protection afforded by the Bill of Rights. We know of no "right of privacy" or constitutional guarantee which makes a citizen immune to the giving of evidence where an inquiry is being made by a legally constituted Congressional committee engaged in a legitimate investigation—any more than a citizen is immune from having to give relevant testimony in a trial before a court of law. The questions, of course, must be relevant to the subject under investigation, and the decisions of the Supreme Court already protect the individual from being required to answer questions which are not pertinent to the inquiry. But, assuming that the question

Amendment does not provide that Congress may not inform the public; it provides that "Congress shall make no law * * * abridging the freedom of speech, or of the press." It was designed to prevent attempts by law to curtail freedom of speech. It was not intended to protect persons against unfavorable public opinion, even though such opinion may be stimulated by disclosures made to or by an investigating body. Nor does the possibility that persons may voluntarily refrain from expressing their views in order to avoid a hostile public reaction mean that any law has abridged their freedom of speech.[35]

D. THE RESOLUTION IS NOT UNCONSTITUTIONAL BECAUSE ONE OF THE COMMITTEE'S PURPOSES MAY HAVE BEEN TO EXPOSE SUBVERSIVE AND UN-AMERICAN ACTIVITIES

Petitioner contends that the Resolution is unconstitutional because the Committee's purpose is

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is material and relevant to an inquiry in aid of a lawful purpose of Congress, we do not believe that the individual is immune from being required to answer merely because the question delves into his private affairs, his previous utterances or his affiliations, political or otherwise. It is not necessary for the purpose of this report to attempt to predict what the courts may hold with respect to the inquiry into an individual's privately entertained belief, except to say that at all events a court would probably insist that the relevancy of such an inquiry be clearly established and that this would be true only in rather exceptional circumstances.

[35] *United States* v. *Rumely*, 345 U. S. 41, is not to the contrary. There, this Court expressly refrained from deciding the relationship between the First Amendment and the Congressional power to investigate.

to publicize, to expose, subversive and un-American activities. The excerpts from the reports of the Committee and the statements quoted by petitioner do indicate that this was *one* of the objects of the Committee. But it does not follow that the Resolution establishing the Committee is unconstitutional.

We shall show that it is entirely proper for Congress to investigate for purposes of disclosure within the field of its constitutional jurisdiction. But even assuming the contrary, petitioner has no valid complaint.

1. In the first place, the existence of an intent to combat subversive activities by publicity does not mean that an inquiry is not also in aid of legislation. A disclosure, for example, that a certain organization was led by persons who were subservient to a foreign government would both tend to open the eyes of the public as to the nature of the organization and be relevant in determining whether legislative regulation of foreign agents were desirable.

Here we are concerned with the contentions that the members of the Committee or of Congress might have some other or even an improper motive. But this does not invalidate a legislative act such as the Resolution here involved, which is constitutional on its face. Compare *Sonzinsky* v. *United States*, 300 U. S. 506, 513–514; *Goesaert* v. *Cleary*, 335 U. S. 464, 467;

Veazie Bank v. *Fenno,* 8 Wall. 533, 548; *McCray* v. *United States,* 195 U. S. 27, 56–59; *United States* v. *Doremus,* 249 U. S. 86, 93–94; *Magnano Co.* v. *Hamilton,* 292 U. S. 40, 44, 45.

Even more clearly, the co-existence of a proper and improper purpose by those entrusted with the administration of a Congressional Resolution does not vitiate legislative action. Throughout our history one of the most common criticisms of Congressional committees has been that they were being used by sponsors or members for political or personal reasons distinct from the ostensible aim of aiding the legislative functions of Congress. Cf. Dimock, *Congressional Investigating Committees* (Johns Hopkins University Studies, Series XLVII, No. 1, 1929), p. 164. In *McGrain* v. *Daugherty,* 273 U. S. 135, and *Sinclair* v. *United States,* 279 U. S. 263, similar attacks were made upon the motives of a Congressional committee. Sinclair argued that the purpose of a question put to him was to aid the prosecution in pending litigation and was therefore improper. But this Court stated (p. 295):

> It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought

> to be elicited may also be of use in such suits.
>
> The record does not sustain appellant's contention that the investigation was avowedly not in aid of legislation. He relies on the refusal of the committee to pass the motion directing that the inquiry should not relate to controversies pending in court, and the statement of one of the members that there was nothing else to examine appellant about. But these are not enough to show that the committee intended to depart from the purpose to ascertain whether additional legislation might be advisable. It is plain that investigation of the matter involved in suits brought or to be commenced under Senate Joint Resolution 54 might directly aid in respect of legislative action.

The *Sinclair* case involved refusal to answer a specific question. In the *McGrain* case there was a failure of the witness to appear at all. The Court indicated clearly there that the purpose of Congress was to be determined from the terms of the authorizing Resolution. See 273 U. S. at pp. 170, 172, 175–178. The Court stated (p. 178):

> The only legitimate object the Senate could have in ordering the investigation was to aid it in legislating; and we think the subject-matter was such that the presumption should be indulged that this was the real object. An express avowal of

> the object would have been better; but in view of the particular subject-matter was not indispensable. In the *Chapman* case, where the resolution contained no avowal, this Court pointed out that it plainly related to a subject-matter of which the Senate had jurisdiction, and said "We cannot assume on this record that the action of the Senate was without a legitimate object." * * * In *People* v. *Keeler,* 99 N. Y. 463, * * * the court said (pp. 485, 487): * * * "We are bound to presume that the action of the legislative body was with a legitimate object if it is capable of being so construed, and we have no right to assume that the contrary was intended."

(Pp. 175–176)

> The contention is earnestly made on behalf of the witness that this power of inquiry, if sustained, may be abusively and oppressively exerted. If this be so, it affords no ground for denying the power. The same contention might be directed against the power to legislate, and of course would be unavailing. We must assume, for present purposes, that neither house will be disposed to exert the power beyond its proper bounds, or without due regard to the rights of witnesses.

2. Since the Resolution was predicated on the need for information for legislative purposes, it is unnecessary to decide whether Congress has authority to investigate for the sole purpose of

bringing information to public attention. There is considerable support, however, among students of Congressional power for the view that the "informing function" of Congress in itself would have brought the investigation within its constitutional competence.[36] Potts, *Power of Legislative Bodies To Punish for Contempt*, 74 U. Pa. L. R. 691, 811; Galloway, *Investigative Function of Congress*, 21 Am. Pol. Sc. Rev. 47, 62; Cousens, *Investigations Under Legislative Authority*, 26 Georgetown L. J. 905, 918; McGeary, *The Developments of Congressional Investigative Power*, p. 104. Woodrow Wilson expressed the opinion that

> It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them

[36] It has been suggested that the function of informing the public is implied and inherent in the legislative purpose. Landis, *Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 205, 206, n. 227 (1926). A representative democracy relies upon the creation of a favorable public opinion for the acceptance and thus the enforcement of new legislation.

> by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function.[37]

We submit that Congress may under the Constitution undertake investigations for the purpose of publicizing information at least so long as the matters to be disclosed are related to a substantive congressional power. It is settled that Congress in the exercise of its regulatory power may authorize an administrative agency to receive and publicize information. *Electric Bond & Share Co.* v. *Securities & Exchange Commission*, 303 U. S. 419. In the *Electric Bond & Share Co.* case, this Court observed, in relation to the registration provisions of the Public Utility Holding Company Act, that "the requirement of information is in itself a permissible and useful type of regulation" (p. 439). This method of protecting the public interest by requiring the disclosure of information in fields subject to the power of Congress has been employed in a number of other statutes. E. g., newspapers using the mails, 37 Stat. 533, 39 U. S. C. 233 (*Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288); Securities Act of 1933, 48 Stat. 74, 15 U. S. C. 77a; Food, Drug and

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[37] Wilson, *Congressional Government*, as quoted in *United States* v. *Rumely*, 345 U. S. 41, 43.

Cosmetic Act, 52 Stat. 1040, 1041, 21 U. S. C. 321; Alien Registration Act, 54 Stat. 673, 8 U. S. C. 452; registration of lobbyists, 60 Stat. 839, 2 U. S. C. 261; registration of foreign agents, 52 Stat. 631, 22 U. S. C. 611; registration of certain subversive organizations, 54 Stat. 1201, 18 U. S. C. (Supp. V) 2386.

Indeed, the principle of disclosure has been advanced by persons zealous to protect civil liberties as the best method of dealing with the Communist problem in this country. The Report of the President's Committee on Civil Rights (*To Secure These Rights,* U. S. Govt. Printing Office, 1947) concluded that (pp. 52, 53):

> The principle of disclosure is, we believe, the appropriate way to deal with those who would subvert our democracy by revolution or by encouraging disunity and destroying the civil rights of some groups.
>
> * * * * *
>
> The federal government * * * ought to provide a source of reference where private citizens and groups may find accurate information about the activities, sponsorship, and background of those who are active in the market place of public opinion.

See also the *Josephson* case, *supra,* 165 F. 2d at 89.

Inasmuch as propaganda emanating from foreign sources may affect the foreign relations of the United States, the national defense, and the

obligation of the United States to guarantee to each state a "Republican Form of Government" and protection against both "Invasion" and "domestic Violence," we think it clear that Congress has power under the Constitution to adopt a program of publicity and disclosure as a public safeguard against subversive propaganda which Congress does not wish to, and perhaps cannot, prohibit.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Appeals be affirmed.

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